No. 15,070

IN THE

United States Court of Appeals

For the Ninth Circuit

TERRITORY OF ALASKA,

Appellant,

vs.

AMERICAN CAN COMPANY, FIDALGO ISLAND PACKING COMPANY, LIBBY, MCNEILL & LIBBY, INC., NAKAT PACKING COMPANY, NEW ENGLAND FISH CO., P. E. HARRIS COMPANY, INC., PACIFIC & ARCTIC RAILWAY & NAVIGATION CO., and OCEANIC FISHERIES CO.,

Appellees.

Upon Appeal from the District Court for the Territory of Alaska, First Division.

APPELLANT'S OPENING BRIEF.

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OPINION BELOW.

The opinion of the District Court is reported in 137 F. Supp. 181.

JURISDICTION.

This suit is a consolidation of eight actions (R. 25, 44) brought by the appellant to recover taxes, interest and penalties from all of the appellees for the years

1949, 1950, 1951 and 1952 under the provisions of the Alaska Property Tax Act, Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949 and repealed by Chapter 22, Session Laws of Alaska, 1953. An order was entered on January 21, 1956 incorporating therein the Court's written opinion and dismissing appellant's complaint against each appellee. (R. 69.) An appeal was taken on February 7, 1956, by filing with the District Court a Notice of Appeal. (R. 70.) The jurisdiction of the District Court was invoked under the Act of June 6, 1900 c. 786, §4, 31 Stat. 322, as amended, 48 U.S.C.A., §101. The jurisdiction of this Court rests on §1291 of Title 28, United States Code, Judiciary and Judicial Procedure.

STATEMENT.

1. In 1949 the Alaska Territorial Legislature enacted the first general property tax act of the Territory, being Chapter 10, Session Laws of Alaska, 1949. This particular enactment, known as the "Alaska Property Tax Act" has been the subject of litigation on several previous occasions. In 1950, an attempt was made to restrain the collection of the tax. Although the trial Court held the law to be invalid and granted an injunction, upon appeal this Honorable Court held the remedy was not in equity, but by an action at law and, therefore, reversed the lower Court. *Hess v. Mullaney,* 91 F. Supp. 139, reversed in *Mullaney v. Hess,* 189 F2d 417. Thereafter, the same taxpayers paid the subject tax under protest and insti-

tuted a new action. The lower Court held the Act to be valid and dismissed the Complaints filed by the taxpayers. *Hess v. Mullaney,* 102 F. Supp. 430. The opinion was sustained by this Honorable Court in *Hess v. Mullaney,* 213 F2d 635.

2. In 1953 the Alaska Property Tax Act was repealed by Chapter 22, Session Laws of Alaska, 1953 by the Legislature's overriding the veto of former Governor Ernest Gruening.

3. Between April and May of 1955, the appellant filed eight separate Complaints seeking to recover a total amount of over one-hundred and seventy-five thousand dollars ($175,000.00) in taxes, interest and penalties which had accrued and were due and owing by the appellees for the years 1949, 1950, 1951 and 1952. (R. 3, 8, 14, 19, 25, 29, 33 and 37.)

4. On either the last day or the day before the last day within which to answer appellant's Complaints, each appellee filed a separate, identical Motion to Dismiss, alleging:

> "(1) That the Complaint does not state a claim against the defendant upon which relief can be granted.
>
> "(2) That the action was not brought within the time required by law." (R. 6, 11, 17, 22, 28, 32, 36 and 40.)

5. On May 5, 1955, the appellant filed a counter motion against four of the appellees requesting that the United States District Judge enter "an order (1) striking the motion to dismiss filed by the defendant, and (2) requiring the defendant to answer the com-

plaint within 10 days thereafter." Appellant listed the following reasons for its motion:

> "1. That defendant's motion to dismiss fails to state the grounds therefore with particularity as is required by Rule 7 (b), Federal Rules of Civil Procedure.
>
> "2. That the Statute of Limitations may not be raised on a motion to dismiss the complaint.
>
> "3. That the motion to dismiss is a dilatory pleading." (R. 7, 12, 18 and 23.)

At the hearing on appellant's Motion to Strike, the second ground was abandoned in view of *Suckow Borax Mines Consolidated, Inc. v. Borax Consolidated, Limited,* 185 F2d 196, 202, (9th Cir.). (R. 41.)

Appellees' principal argument in answer to appellant's contention that Rule 7 (b) had not been complied with was that their Motion to Dismiss conformed to Form 19 of the Appendix Forms to the Federal Rules of Civil Procedure and was therefore stated with the sufficient particularity. The late Honorable George W. Folta sustained appellees' argument and denied appellant's Motion to Strike, holding that:

> "Although it can hardly be said that the matter is free from doubt, Munson Line v. Green, 6 F.R.D. 470, 474, it would appear that under the cases cited supra the court is warranted in holding that Form 19 is sufficient to meet the requirements of Rule 7, 2 Moore, 2265-6, Sec. 12.14. * * *" (R. 42.)

The District Judge went on to also comment that:

> "Undoubtedly, since a contrary holding would eliminate surprise and delay and thus conduce to

the administration of justice, I am convinced that this Court should, in the interest of justice, adopt a rule in conformity with that existing in most federal jurisdictions requiring the movant to submit a brief or memorandum in support of his motion." (R. 42.)[1]

6. The appellees' Motions to Dismiss were consolidated for hearing, (R. 25, 44) and the Court convened on October 28, 1955, and heard arguments by H. L. Faulkner, R. E. Robertson and W. C. Arnold for the appellees, and Henry J. Camarot, Assistant Attorney General, for the appellant. (R. 46.)

7. In the course of the hearing, the following offer of proof was made by appellant's attorney, together with the Court's statement of rejection:

"The Court. Will you make your offer again, counsel?

Mr. Camarot. If the Court please, when the defendants argued their motions to dismiss, they

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[1]In the Uniform Rules of the District Court for the District of Alaska, effective January 28, 1956, the District Judges promulgated this new local procedural rule:

"Rule 5. Motions and Matters Other Than Trials on the Merits.

* * *

(d) Requirements for Submission:

(1) There shall be served and filed with the notice of motion or other application and as a part thereof, * * * (b) a brief, complete, written statement of all reasons in support thereof, together with a memorandum of the points and authorities upon which the moving party will rely. Each party opposing the motion or other application shall (a), within five days after service of the notice thereof upon him, serve and file a brief, complete, written statement of all reasons in opposition thereto and an answering memorandum of points and authorities, or a written statement that he will not oppose said motion, * * *."

recognized the general repealer clause, Section 19-1-1. However, they stated that they were of the opinion that Chapter 22, S.L.A. 1953, and particularly Section 2 (a), was a special repealer clause which necessarily made an exception to the general repealer clause, and, therefore, all taxes that would have been due and owing to the Territory of Alaska prior to 1953 would be null and void.

The Territory wishes at this time to call the Court's attention to the fact that Section 2 (a) of Chapter 22——

The Court. Counsel, I understood you were not to argue this point, but you may introduce this evidence here.

Mr. Camarot. I just want to give the background, if the Court please, so it will be clear in the record.

The Court. Very well.

Mr. Camarot. The Territory of Alaska, plaintiff, wishes to call to the Court's attention that Section 2(a) is not in fact merely a special repealer clause but, rather, adds an extra ingredient and, really, advantage to the municipalities, school or public utility districts who may be involved in that it permits them to levy and assess during the current fiscal year, which could be beyond the year 1952 and to the year 1953, an additional assessment. The Territory was completely prohibited from levying any taxes after 1952.

In further support that this was the intent of the Legislature I would like to introduce House Bill No. 3,[2] which contains a provision to the

[2]House Bill No. 3 reads as follows:

"Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.

effect 'That all accrued and unpaid taxes on real property and improvements, and personal property, boats and vessels, levied under the provisions of Chapter 10, S.L.A. 1949, are hereby cancelled, repealed and abrogated, and declared null and void.' And I proffer this particular evidence to show the intent of the Legislature was not to permit the cancellation of all taxes due and owing prior to 1952 in that they specifically omitted this particular section. There is no question this particular section was included in the original House Bill which was introduced, and I call to the Court's attention that the final act which is in the regular Session Laws completely omits that phrase which cancels all previous taxes.

The Court. You have made your offer. I understand the defendants object.

Mr. Arnold. For the grounds previously stated we object, your Honor.

Mr. Camarot. If the Court please, I don't know that the grounds previously stated will show in the record.

The Court. Well, it is not necessary. This matter is before the Court upon a motion to dismiss the complaint of plaintiff in these several cases, consolidated, upon the grounds that it fails to state a claim under the Federal Rules of Civil Procedure. In such a hearing we cannot introduce evidence of something other than the acts

---

Section 2. That all accrued and unpaid taxes on real property and improvements, and personal property, boats and vessels, levied under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, are hereby cancelled, repealed and abrogated, and declared null and void.

Section 3. An emergency is hereby declared to exist and this act shall be in full force and effect for and after the date of its passage and approval." (R. 55.)

of the Legislature or such matters as Journal entries, of which the Court could take judicial notice, indicating any such intent or indicating the question of intent. We can hear only tests and sufficiency of the complaint, for which reason the offer to introduce this exhibit of the House Bill, which was not passed, as I understand it, by the Legislature, must be denied. I might add that, even if admitted, from the statement of counsel such bill would not bear out counsel's contention." (R. 46-48.)

8. On January 21, 1956 the District Court granted appellees' Motion to Dismiss the Complaint (R. 69) for the reasons stated in its opinion. (R. 56.) This appeal followed. (R. 70-76.)

QUESTIONS PRESENTED.

1. Whether the Alaska Property Tax Act (Chapter 10, Session Laws of Alaska, 1949) directing that "every person shall be assessed and taxed annually on his property" is a tax on the appellees for which they are personally liable or merely a tax on their property.

2. Whether the appellant is without a remedy to collect and enforce taxes due and owing under the Alaska Property Tax Act.

3. Whether the language in Chapter 22, Session Laws of Alaska, 1953, the Act repealing the Alaska Property Tax Act is a so-called special savings clause having the effect of voiding and nullifying appellant's right under the Territorial General Savings Clause

(Section 19-1-1 ACLA 1949) to collect accrued and unpaid taxes for the years 1949, 1950, 1951 and 1952.

4. Whether, in interpreting a particular statute, (Chapter 22, Session Laws of Alaska, 1953) the terms and expressions of which are ambiguous, the Court is limited in ascertaining the legislative intent to only those statutory constructional aids of which it may take "judicial notice" or whether it may refer to extrinsic aids, otherwise admissible under the laws of evidence, which bear directly on such intent.

STATUTES INVOLVED.

Chapter 10, Session Laws of Alaska, 1949, the Alaska Property Tax Act, appears in the Appendix, infra, Appendix "A", pp. 1-28.

Chapter 22, Session Laws of Alaska, 1953 repealing Chapter 10, Session Laws of Alaska 1949, as amended:

> "Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.
>
> Section 2. Section 1 of this Act shall not be applicable to:
>
> (a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such mu-

nicipality, school or public utility district; and

(b) any exemptions from the taxes referred to in subsection (a) of this section, which have been granted under the provisions of Section 6 (h) of Chapter 10, Session Laws of Alaska 1949.

Section 3. An emergency is hereby declared to exist and this Act shall be in full force and effect for and after the date of its passage and approval."

Section 19-1-1 Alaska Compiled Laws Annotated, 1949, the Alaska General Savings Clause, (as amended by Chapter 4, Extraordinary Session Laws of Alaska, 1955):

"19-1-1. Effect of repeals or amendments. The repeal or amendment of any statute shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. * * *"

Section 2-1-2 Alaska Compiled Laws Annotated, 1949:

> "§2-1-2. Applicability of common law. So much of the common law as is applicable and not inconsistent with the Constitution of the United States or with any law passed or to be passed by Congress or the Legislature of Alaska is adopted and declared to be law in the Territory of Alaska."

SPECIFICATION OF ERRORS.

The points in the above appeal upon which appellant relies are as follows:

(1) The Court erred in granting the appellees' Motion to Dismiss the Complaint.

This is error since the Complaint did state a claim upon which relief can be granted in that Territorial law specifically permits recovery of the real and personal property taxes sought therein.

(2) The Court erred in holding that a personal action would not lie against each of the appellees for the recovery of the taxes involved.

This is error since Section 12 of Chapter 10, S.L.A., 1949, and other Sections therein, decree that the "person" is to be "assessed and taxed".

(3) The Court erred in holding that the accrued and unpaid taxes due and owing under Chapter 10, S.L.A., 1949, by the appellees to the appellant for the years 1949, 1950, 1951 and 1952 were cancelled and excused by Chapter 22, S.L.A., 1953.

This is error: (a) Since Chapter 22 and the legislative history surrounding the passage of this Act indicates the accrued and unpaid taxes for the years 1949, 1950, 1951 and 1952 were not to be cancelled or excused; and (b) Since the cancellation or excusing of such taxes would create an unjust result as to those taxpayers who in good faith have paid the said tax.

(4) The Court erred in refusing to consider pertinent evidence of legislative history which, if considered, would show the true legislative intent and statutory construction to be placed on Chapter 22, S.L.A., 1953, i.e., that unpaid taxes levied by Chapter 10, S.L.A., 1949, were not intended to be cancelled or excused by the Legislature.

This is error since the rejected evidence would have clearly shown that the legislative intent and intended statutory construction is contrary to the District Court's holding and that the payment of said taxes were not excused by the Legislature.

(5) The Court erred in rejecting the introduction into evidence of both the original House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature.

This is error since the original House Bill and the Senate Bill which by their plain language would have excused the accrued taxes for the specific years involved, were unqualifiedly rejected by both houses and therefore clearly manifest a legislative intent not to excuse the payment of said back taxes.

(6) The Court erred in holding that the Territory's General Savings Clause (Section 19-1-1 ACLA 1949)

is in irreconcilable conflict with the alleged "specific savings clause" of Section 1 of Chapter 22, S.L.A., 1953.

This is error since the Territory's General Savings Clause and the alleged specific savings clause in Chapter 22, are in complete harmony and easily reconcilable.

(7) The Court erred in holding that the appellant is without remedy to collect and enforce the taxes accruing to the appellant under Chapter 10, S.L.A., 1949.

This is error in that: (a) Chapter 10, S.L.A., 1949, expressly authorizes the collection and enforcement of taxes by property foreclosure; and (b) the common law, which is expressly made applicable to Alaska by Territorial statute, authorizes the collection of taxes by appropriate in personam proceedings where the taxpayer is personally liable.

SUMMARY OF ARGUMENT.

I.

A. THE ALASKA PROPERTY TAX ACT IS A TAX ASSESSED AND LEVIED AGAINST THE TAXPAYER FOR WHICH HE IS PERSONALLY LIABLE AND, ACCORDINGLY, AN ACTION IN THE NATURE OF ASSUMPSIT OR DEBT WILL LIE TO RECOVER THE PAYMENT OF ALL ACCRUED AND UNPAID TAXES THEREUNDER.

1. The Alaska Property Tax Act specifically imposes a personal obligation on the "taxpayer" who is "assessed and taxed".

2. Where a taxpayer is personally liable to pay a tax an action for the recovery thereof will lie.

3. The case of *City of Yakutat v. Libby, McNeill & Libby,* cited by the District Court as controlling precedent does not support the Court's conclusion.

II.

A. SECTION 2 OF CHAPTER 22, SESSION LAWS OF ALASKA 1953, THE ALLEGED SPECIAL SAVINGS CLAUSE, HAS A REASONABLE PURPOSE WHICH IN NO WAY INFRINGES UPON THE TERRITORY'S GENERAL SAVINGS CLAUSE, SECTION 19-1-1 ACLA 1949, AS AMENDED, AND THEREFORE, BOTH STATUTES SHOULD HAVE BEEN READ IN PARI MATERIA.

1. Even if it be assumed that Section 2 of Chapter 22, SLA 1953 were a special savings clause, it could not nullify the continuing rights and liabilities saved under a general savings clause if such was not the intention of the Legislature.

B. ONCE IT WAS DETERMINED AND ESTABLISHED THAT AN AMBIGUITY EXISTS IN THE STATUTE (CHAPTER 22, SLA 1953), THE COURT WAS UNDER A DUTY TO MAKE USE OF ALL AVAILABLE INTERPRETATIONAL AIDS TO DETERMINE THE TRUE MEANING AND INTENT OF THE STATUTE.

1. Because of the particular circumstances existing in Alaska, the Court should consider any and all extrinsic aids which will help ascertain and establish the true legislative intent in passing

Chapter 22, SLA 1953, and not limit itself to only those matters of which it can take judicial notice.

2. Because of the ambiguity of the statute and the direct bearing on the legislative intent, the Court should have considered the bill originally introduced and the amendments thereto, which preceded the final adoption of Chapter 22, SLA 1953.

ARGUMENT.

PRELIMINARY CONSIDERATION.

At the outset of this important case, appellant deems it essential to briefly reconstruct the procedural background against which the appellees' Motion to Dismiss was heard.

A positive effort had been made to have the appellees state with particularity the premises upon which they predicated their motions. (R. 7, 12, 18, 23.) The attempt was defeated by the District Court agreeing with appellees that official Form 19, appearing in the Appendix to the *Federal Rules of Civil Procedure,* was sufficient compliance with Rule 7 (b). (R. 40.) As a direct result of this ruling appellant was unaware on which particular theory of law the appellees would embark to substantiate their assertion that the Complaint did not state a claim upon which relief could be granted.[3] Nor was it revealed until the hear-

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[3]The bare statement "that the complaint does not state a claim against the defendant upon which relief can be granted" is nothing more than a general demurrer (Volume 2, *Moore's Federal Practice,* 1512, Section 7.05). A type of pleading which has been

ing when appellees announced they were basing their argument on the contention that Section 2 of Chapter 22 SLA 1953 was equivalent to a "special savings" clause and, therefore, voided the application of the Territory's General Savings Clause, (Section 19-1-1 ACLA 1949, as amended.) Because of the inability to anticipate the many legal bases that appellees might lean towards in support of their Motion, appellant was a victim of the "sporting theory" of justice, see 41 *Mich. Law Review,* 224; 38 *Columbia Law Review,* 1436, and an opportunity to present a full oral argument predicated on preliminary research and adequate preparation was denied.[4]

However, rather than specify the above as error and detract from the grave substantive questions presented herein, appellant deemed it more appropriate and equally effective to merely call these procedural events to this Court's attention as one more cumulative fact to be weighed in considering the case as a whole.

The District Court erred as a matter of law in dismissing the Complaints, because:

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abolished under the Federal Rules. See Rule 7(c) and *Tobin v. Chambers Construction Co.,* D.C. Neb. 1952, 15 F.R.D. 47; *Smedley v. Guy F. Atkinson Co. et al,* D.C. Neb. 1951, 12 F.R.D. 355.

[4]As stated previously in Footnote 1, page 5, the newly promulgated local Uniform Rules of the District Court for the District of Alaska now make it an indispensable requirement that the issues be defined by both parties submitting "a brief, complete, written statement of all reasons in support" of their Motion "together with a memorandum of the points and authorities" upon which they rely. See Rule 5 (d) supra.

I.

A. THE ALASKA PROPERTY TAX ACT IS A TAX ASSESSED AND LEVIED AGAINST THE TAXPAYER FOR WHICH HE IS PERSONALLY LIABLE AND, ACCORDINGLY, AN ACTION IN THE NATURE OF ASSUMPSIT OR DEBT WILL LIE TO RECOVER THE PAYMENT OF ALL ACCRUED AND UNPAID TAXES THEREUNDER.

At the conclusion of the oral argument on the Motion to Dismiss and before leaving the Bench, the District Judge summarily held that no personal action would lie against the appellees for recovery of the accrued and unpaid taxes involved and that the Complaints involving over $175,000.00 were therefore subject to immediate dismissal. This holding was predicated on the Court being of the early view that there was no "remedy to bring a suit for individual liability" under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended. (R. 50.)

In the subsequent written opinion filed by the lower Court it confirmed its previous oral holding stating: "* * * This issue has been squarely determined against the plaintiff (Appellant) by the District Court for this Division in the case of *City of Yakutat v. Libby, McNeill & Libby,* 13 Alaska 378, 98 F. Supp. 101 * * *" (R. 58.)

Appellant's position throughout has been that the taxes that accrued and are now owing under the Alaska Property Tax Act are a personal obligation, for which a remedy therefor lies, and are, in addition, a charge against the taxpayers' property. In support of this assertion, appellant submits the following propositions:

1. The Alaska Property Tax Act specifically imposes a personal obligation on the "taxpayer" who is "assessed and taxed".

2. Where a taxpayer is personally liable to pay a tax an action for the recovery thereof will lie.

3. The case of *City of Yakutat v. Libby, McNeill & Libby,* cited by the District Court as controlling precedent does not support the Court's conclusion.

1. The Alaska Property Tax Act specifically imposes a personal obligation on the "taxpayer" who is "assessed and taxed".

To properly determine whether appellees are personally liable to pay the accrued and unpaid taxes herein, it is necessary to examine the pertinent provisions of the Alaska Property Tax Act. (Chapter 10, Session Laws of Alaska 1949, as amended, reprinted in full in the Appendix on pages 1-28.) The Sections upon which the appellant principally relies are:

(a) Section 9, which empowers the assessor to make an independent investigation of any person "liable to assessment";

(b) Section 12, which provides that "Every person shall be *assessed and taxed* annually on his property in the division in which the property is situated, * * *"; (Emphasis added.)

(c) Section 13 which declares that

"* * *(d) Where the property assessed is owned by two or more persons in undivided shares, each owner shall be assessed on the undivided interest at the pro-

portion of the assessed value of the property that his undivided interest bears to the whole.";

(d) Section 14 which places the duty upon the assessor of each division to prepare an "* * * annual assessment roll * * * covering property *outside* of municipalities and school districts and public utility districts, * * *" and to include thereon: "* * * the arrears of taxes *owing by any persons;* * * *" (Emphasis added.)

(e) Sections 15, 17, 22, 25, 30 and 37, all of which show a use and re-use of the descriptive noun "taxpayer" when referring to his rights, duties or liabilities.

(f) Section 25 which provides that: "Any person whose name appears on the assessment roll * * * or who is assessed * * * may appeal to the Board" of Assessment and Equalization "with respect to any alleged overcharge, * * * ".

The word "assessment", when used in tax acts, has admittedly not been employed in a consistent manner. It has been regarded as having both a broad and a narrow meaning dependent on the context of the statute as a whole. It has often been used as a synonym for "taxation". In *Black's Law Dictionary,* Third Edition, "assessment" is defined, in its general sense, as denoting "the process of ascertaining and adjusting the shares respectively to be contributed by several persons towards a common beneficial object according to the benefit received." In *Abrams, et al. v. City and County of San Francisco,* 119 P2d 197,

199, it was held that "assessment" means (a) listing persons properly to be taxed, and (b) estimating the sums which are to be the guide of the apportionment of the tax between them.

Section 9 of the Alaska Property Tax Act refers to the "person * * * liable to assessment". When used in this setting it is perfectly apparent that the "person * * * liable to assessment" is the taxpayer who is subject to the tax liability or charge.

That the taxes are, in fact, assessed or taxed against the owners thereof, is decidedly clear when Section 12 of the Act is examined. This Section, under the heading "Assessment", among other things, unequivocally directs that: "Every person shall be *assessed and taxed* annually on his property". (Emphasis supplied.) Accordingly, even if the argument is made by appellees that "assessment" is not to be accepted as synonymous with "taxation" under Section 12, it is inescapable that the "person" is to be initially "assessed" and then "taxed".

As noted above, Section 13 (d) declares that:

> "(d) Where the property assessed is owned by two or more persons in undivided shares, *each owner* shall be assessed on the undivided interest at the proportion of the assessed value of the property that his undivided interest bears to the whole." (Emphasis supplied.)

Thus, tenants in common, joint tenants, or tenants by the entirety are each "assessed on the undivided interest" they hold. From the framework of this Section it is again apparent that the word "assessed"

stands for the word "taxed", otherwise Section (d) would have no meaning.

Section 14 continues the weaving of this consistent pattern by requiring the assessor of each division to prepare an "* * * annual assessment roll * * * covering property outside of municipalities and school districts and public utility districts, * * *" and to include thereon: "* * * the arrears of taxes *owing by any persons* * * *". (Emphasis added.)

The word "taxpayer" is used throughout the Act. This descriptive noun has been generally defined as "a person chargeable with a tax; one from whom government demands a pecuniary contribution towards its support." *Black's Law Dictionary,* Third Edition, 1706; *Webster's New International Dictionary,* Second Edition, Unabridged, 2587, Volume 41, *Words and Phrases,* page 221.

Section 25 authorizes any person to appeal to the Board of Assessment and Equalization with respect to any alleged overcharge. An "overcharge" means to charge a tax in excess of that permitted by law. See *Texas Power and Light Company v. Kousal, et al.,* 170 SW 2d 278, 284. It is difficult to conceive how *property* could be "overcharged", the act of overcharging necessarily being made against a person.

Moreover, it must be recognized that the Alaska Property Tax Act includes a tax on *personal* property, which is easily removed or dissipated. And, although a lien may exist on the personal property, if the District Court decree is to be regarded as correct and the collection of taxes is limited to the remedies pro-

vided for in the Act (which only permits foreclosure of liens on *real* property), then there is no legal recourse to collect taxes on personal property. This point is further discussed hereafter. Because of the many transients in the Territory, the Legislature was readily justified in imposing a personal liability on the taxpayer. Admittedly, it could have accomplished its objective in more definite terms. However, the language is not so defective as to forego reaching the conclusion that the individual is also liable for the tax.

It is perfectly logical and not uncommon for a legislature to look to both the person and his property as a means of satisfying the taxes. And, unless the literal language of the above-quoted sections is to be completely disregarded, there is no alternative but to so conclude. To hold otherwise would be to place a limitation on the Act not authorized, a limitation which would seriously affect the amount of taxes recoverable by the Territory.

Personal Tax Liability Under Judicial Decisions.

Even under statutes imposing the tax solely *on the property,* the owner thereof has been held personally liable. A summary of the law as presently exists is concisely expressed in 84 C.J.S., 1318 Taxation, Section 643, wherein the syllabus reads:

> "Under many taxing systems there is no personal liability on the part of an owner for taxes imposed *on his property,* but such personal liability may exist under statutory or constitutional provisions therefor, or by reason of judicial decisions." (Emphasis added.)

Without an extensive study, the following "judicial decisions" have been found wherein it has been held, without the apparent benefit of any supporting statute, that taxes *on real property* are a personal liability chargeable to the owner:

Wiggins Estate Co., Inc., et al. v. Jeffery, et al., (Ala.) 19 So. 2d 769;

Bains Bros. Inv. Co. v. Purdie, (Ala.) 60 So. 920;

Gable v. Seiben, (Ind.), 36 N.E. 844;

Starling v. West Erie Avenue Building & Loan Ass'n. (Pa.), 3 A. 2d 387;

Northumberland County, et al., v. Philadelphia and Reading C. & I. Co., (Pa.), 131 F2d 562;

Powers et al. v. City of Richmond, (Va.), 94 SE 803, 806;

Bibb Nat. Bk. v. Colson, et al., (Ga.), 134 SE 85;

State v. Bennett, et al., (Tenn.), 180 SW 2d 891, 893;

State ex rel. Bonner, et al. v. Andrews, (Tenn.), 175 SW 563, 569.

And compare:

Raymond v. King County, (Wash.), 201 P. 455;

Welberg v. Yakima County, et al., (Wash.), 231 P. 931, 933;

Trustees of Phillips Exeter Academy v. Exeter, (N.H.), 33 A. 2d 665;

Town of Cheraw v. Turnage, (S.C.), 191 SE 831, 836;

Rothrock v. Oakman, (S.C.), 10 SE 2d 345, 348.

Taxes are the life-blood of the sovereign; without them government could not exist. For this reason, it is the policy of the law, as exemplified above, to lend all possible assistance in the collection of all taxes. See *Nassau County v. Lincer,* 254 App. Div. 746, 4 NYS 2d 77, 78.

2. Where a taxpayer is personally liable to pay a tax an action for the recovery thereof will lie.

Admittedly, the Alaska Property Tax Act does not provide for (1) a specific remedy for the collection of taxes against the person, or (2) a designated foreclosure proceeding of liens against personal property. Section 42 of the Act limits the recovery of unpaid liens "* * * in substantially the manner prescribed in Sections 22-2-8 to 22-2-18, both inclusive of the Alaska Compiled Laws Annotated, 1949, for the foreclosure of *land* registration liens, * * *". (Emphasis added.) The Sections just referred to were originally taken from Chapter 49, Session Laws of Alaska, 1945, an Act designed, "To require declaration of the ownership of *land,* * * *" (Emphasis added.) Section 22-2-8 (Section 9 of Chapter 49, Session Laws of Alaska, 1945) is reprinted in the Appendix (pp. 31-32). Thus, under the Court's opinion that the remedies in the Act are exclusive, the right to collect taxes are limited to foreclosing those liens on *real property,* and no other. And, if the lower Court's opinion is found to be correct, this is the sole and exclusive remedy that has ever existed during the years the Alaska Property Tax Act was in effect. To carry the Court's rationale to its ultimate end, individuals refusing to pay taxes

on *personal* property would at no time have ever been subject to legal action of any nature since neither a foreclosure proceeding against their personal property, nor an in personam action is expressly provided for in the Act.

It has been held by the highest Court of the land that if a remedy is inadequate to compel full performance of the tax obligation, such fact is persuasive in itself to conclude that it was not intended to be exclusive of applicable common law remedies by which recovery might be secured. See *Price, Receiver v. United States,* 269 U.S. 492; *United States v. Chamberlin,* 219 U.S. 250; *Dollar Savings Bank v. United States,* 86 U.S. 80, 19 Wall. 227. As the common law is applicable to Alaska, Section 2-1-2 ACLA 1949, (supra, page 11) the remedies allowed thereunder including the common law actions of debt and assumpsit, may also be resorted to.

In *Milwaukee County v. M. E. White Co.* (1935), 296 U.S. 268, 271, 80 L. ed 220, 224, the Supreme Court in discussing the nature of a tax obligation, had this to say:

> "It is a statutory liability quasi-contractual in nature, enforcible, if there is no exclusive statutory remedy, in the civil courts by the common law action of debt or indebitatus assumpsit. * * *"

The Supreme Court of Tennessee, in *State v. Bennett, et al.,* 180 SW 2d 891, 893, left no doubt as to what legal action could be instituted by their state government:

> "It has long been the rule in this state that 'taxes, when assessed, become a personal debt, and that the government is entitled to all the remedies for their collection, including an ordinary suit at law, if it chooses to resort to that remedy.' " (Citing cases.)

The late Professor Cooley in his treatise on the Law of Taxation (Volume 3, Fourth Edition, p. 2629, Section 1330) summarized what is still the guiding rule today, in these words:

> "In some states it has been held that an action at law may be maintained to collect taxes although a statute provides a special remedy for their collection, unless the statutory remedy is in terms made exclusive. However, in most jurisdictions it is held that statutory remedies for the collection of delinquent taxes are exclusive and preclude the maintenance of an action at law, i.e., that when the statute undertakes to provide remedies, and those given do not embrace an action at law, a common-law action for the recovery of the tax as a debt will not lie. Furthermore, some decisions hold that even where the statute which prescribes a special remedy for collection, other that a personal action, is inadequate or ineffectual, the statutory remedy is exclusive, *but the general rule is that if the statutory remedy is inadequate or ineffectual a personal action to recover the tax will lie.* An action to recover taxes is not precluded by statutory remedies which clearly are not exclusive, * * *" (Numerous cases cited in the footnotes thereof.) (Emphasis added.)

The very fact that the remedy is manifestly inadequate to compel full performance of the tax obliga-

tion declared under the Act, is persuasive that it was not intended to be exclusive of applicable common law remedies. To hold otherwise leads to the doubtful and paradoxical conclusion that the Legislature did not intend that taxes on personal property were to be enforced and collected—notwithstanding the existence of a lien on such property.

Summary remedies have been authorized by every country in every age for the collection by the government of its revenues. *Webber Lumber Co. v. Shaw, et al.,* (Mass.) 75 NE 640.

It is contrary to the theory on which taxes are levied and collected that any one remedy should be treated as exclusive. The remedy which the Act provides for the collection of the tax is cumulative. The Territory should not be bound to select and pursue a single one. It cannot be presumed that the Legislature intended any such result.

In final analysis, the general rule appears to be that if the taxpayer is personally liable to pay the tax, and the statutory remedy provided for the collection of any delinquent taxes is not sufficient or exclusive, the government may bring an in personam action for the recovery thereof.

3. The case of City of Yakutat v. Libby, McNeill & Libby, cited by the District Court as controlling precedent does not support the Court's conclusion.

In the lower Court's written opinion, it disposed of the issue of collecting taxes against the person with this single paragraph:

> "The Territory, in its brief, again raises this question of procedure, claiming a personal liability of the defendants for such taxes. This issue has been squarely determined against the plaintiff by the District Court for this Division in the case of City of Yakutat v. Libby, McNeill & Libby, 13 Alaska 378, 98 F. Supp. 101. Such action involved the question of remedy as to taxes levied by municipalities in which the Court held that the remedy sought of a personal action against the taxpayer is not available since the remedy prescribed by statute is exclusive. In the same manner Chapter 10 provided an exclusive method of levy and collection of the general property tax. This question, therefore, will not be further considered." (R. 58.)

No part of the record of *City of Yakutat v. Libby, McNeill & Libby,* supra, was before the Court at the time of the argument of the Motion and, to appellant's knowledge, neither the Judge nor either party were in any way notified of the contents of the record in that case.

The written opinion filed in the *City of Yakutat* case in 13 Alaska 378 and 98 F. Supp. 101, does not support the above quoted conclusion and, in fact, conversely, imputes agreement with appellant's contentions herein.

The pronounced point of variance between *City of Yakutat* and the case at Bar is the different statutes involved. In *City of Yakutat,* the District Court was interpreting an Act of Congress together with two Territorial enactments—none of which are involved

herein—while in this action, the suit revolves around the proper construction of the Alaska Property Tax Act. The personal action brought against each of the appellees is derived from alleged rights claimed by the Territory under the Alaska Property Tax Act; therefore, the personal liability of each appellee should be decided by a careful reading and application of that Act.

A mere cursory examination of the language in 31 Stat. 321, 521, Section 201 (Appendix "F", page 35) along with Sections 16-1-35 (9) (Appendix "E", page 34) and 16-1-121 Alaska Compiled Laws Annotated (Appendix "B", page 30 the relevant legislation which guided the Court to its conclusion in *City of Yakutat* will reveal that there is not the slightest inference or suggestion that a tax could be levied or assessed against the person. In contrast, particularly compare Sections 9, 12, 13, 14, 25 and the other Sections of the Alaska Property Tax Act referred to above, (supra, pages 9-13, 18.)

The character and language of the two taxing measures are so apart and unrelated that it is difficult to accept *City of Yakutat* as precedent herein.

Of utmost significance in the latter case is this statement:

> "Whether the remedy sought by plaintiff existed by necessary implication before the passage of the act of March 2, 1903, supra, becomes therefore the crucial question. *The rule that in the absence of statutory provision, a personal action lies for the enforcement of the collection of a tax appears*

to be limited to taxes assessed against individuals, 1 Cooley on Taxation, 3rd Ed., 17." (Emphasis supplied.) 13 A. 378, 381, 98 F. Supp. 1011, 1013.

Thus, the clear inference is, had Judge Folta found that a personal liability existed, he would have ruled a remedy was available for the collection of the unpaid taxes. The District Court erred as a matter of law in dismissing the Complaints because:

II.

A. SECTION 2 OF CHAPTER 22, SESSION LAWS OF ALASKA 1953, THE ALLEGED SPECIAL SAVINGS CLAUSE, HAS A REASONABLE PURPOSE WHICH IN NO WAY INFRINGES UPON THE TERRITORY'S GENERAL SAVINGS CLAUSE, SECTION 19-1-1 ACLA 1949, AS AMENDED, AND THEREFORE, BOTH STATUTES SHOULD HAVE BEEN READ IN PARI MATERIA.

B. ONCE IT WAS DETERMINED AND ESTABLISHED THAT AN AMBIGUITY EXISTS IN THE STATUTE (CHAPTER 22, SLA 1953), THE COURT WAS UNDER A DUTY TO MAKE USE OF ALL AVAILABLE INTERPRETATIONAL AIDS TO DETERMINE THE TRUE MEANING AND INTENT OF THE STATUTE.

Introduction.

The District Court, on its own initiative, decided that, in addition to dismissing the Complaints for failing to state a cause of action upon which relief could be granted, there allegedly being no basis for an in personam action, it was also incumbent upon the Court to "examine the question and try and determine the whole matter on the merits of the controversy rather than the question of remedy." (R. 51.) This unsuspected announcement came without warning. Only a few minutes earlier, when appellant had sought to assist the Court in bringing about a correct inter-

pretation of Chapter 22, Session Laws of Alaska, 1953, by introducing House Bill No. 3, the original bill which had eventually materialized into that Act, the Court was emphatic in stating that in a Motion to Dismiss, evidence could not be introduced of something "other than the acts of the Legislature or such matters as Journal entries, of which the Court could take judicial notice, indicating any such intent or indicating the question of intent. We can hear only tests and sufficiency of the complaint, for which reason the offer to introduce this exhibit of the House Bill, which was not passed, as I understand it, by the Legislature, must be denied." (R. 48.)

Thus, for one portion of the proceedings the Court curbed the scope of consideration on the Motion to Dismiss and would not hear only matters testing the "sufficiency of the complaint"; yet, thereafter, and within the hour, it occurred to the Court to broaden the hearing and "examine the question and try and determine the whole matter on the merits of the controversy". (R. 51.) And "the merits of the controversy" were subsequently resolved, to the satisfaction of the Court, by its holding that Section 2 (a) of Chapter 22 excused, nullified and discharged all unpaid taxes due and owing the Territory under Chapter 10, Session Laws of Alaska 1949, the Alaska Property Tax Act. The appellant disputes the Court's conclusion and in support thereof, appellant submits the following arguments:

(A) Section 2 of Chapter 22, Session Laws of Alaska 1953, the alleged special savings clause, has a

reasonable purpose which in no way infringes upon the Territory's General Savings Clause, Section 19-1-1 ACLA 1949, as amended, and therefore, both statutes should have been read in pari materia.

(1) Even if it be assumed that Section 2 of Chapter 22, SLA 1953 were a special savings clause, it could not nullify the continuing rights and liabilities saved under a general savings clause if such was not the intention of the Legislature.

(B) Once it was determined and established that an ambiguity exists in the statute (Chapter 22, SLA 1953), the Court was under a duty to make use of all available interpretational aids to determine the true meaning and intent of the statute.

(1) Because of the particular circumstances existing in Alaska, the Court should consider any and all extrinsic aids which will help ascertain and establish the true legislative intent in passing Chapter 22, SLA 1953, and not limit itself to only those matters of which it can take judicial notice.

(2) Because of its direct bearing on one of the principal issues at Bar, the Court should have considered the bill originally introduced and the amendments thereto, which preceded the final adoption of Chapter 22, SLA 1953.

A. SECTION 2 OF CHAPTER 22, SLA 1953, THE ALLEGED SPECIAL SAVINGS CLAUSE, HAS A REASONABLE PURPOSE WHICH IN NO WAY INFRINGES UPON THE TERRITORIAL GENERAL SAVINGS CLAUSE, SECTION 19-1-1 ACLA 1949, AS AMENDED, AND THEREFORE BOTH STATUTES SHOULD BE READ IN PARI MATERIA.

In determining "the merits of the controversy", the District Court reached the conclusion that Section 2 (a) of Chapter 22, SLA 1953 was, in fact, a "special savings clause" within the repealing Act and, as such, was an exception to the Territorial General Savings Act which preserves all rights accruing or accrued prior to the repeal of any Act. As a result, the Court was of the view that only those taxes owed to municipalities, school or public utility districts could be collected, and conversely, unpaid taxes owed to the Territory, appellant herein, were excused and nullified.

Section 19-1-1 ACLA 1949, as amended, is quoted in full in the Appendix (see page 55). The relevant portions are as follows:

> "The repeal or amendment of any statute shall not affect any * * * right accruing or accrued * * * nor shall any * * * liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. * * *"

Section 2 of Chapter 22, SLA 1953, the alleged "special savings clause" directed that Section 1 of the Act shall not be applicable to:

> "(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility districts; * * *."

The Doctrine of Pari Materia.

It is a fundamental rule of statutory construction that statutes are not to be considered as isolated fragments of law. They should be construed together, as a whole, or as parts of a great connected, homogenous system of a single and complete statutory arrangement. See 50 Am. Jur. 345, *Statutes,* Section 349. Implied repeals or limitations of one act by another are never favored. And it is not for the Courts, unless the conflict between the two acts is inescapable and conflicting, to exclude from the coverage of an act matters which its terms expressly include, on the theory that a later act has a purpose which seems inconsistent and has thus impliedly repealed or limited the act under view. Only where it is found not possible for both acts to co-exist can an act be held to repeal or limit another, and then only in respect to the precise point of conflict. *United States v. 24 Cans Containing Butter, et al.,* 148 F2d 365, certiorari denied, 90 L. ed 450, 326 US 752; re-hearing denied, 90 L. ed 493, 326 US 808. Where

there are any reasonable grounds for continuing the effectiveness of both statutes, a repeal will not be presumed. *United States v. Kushner,* 135 F2d 668, certiorari denied, 87 L. ed 1850, 320 US 212. *Grimes Packing Co. v. Hynes,* 67 F. Supp. 43, 11 Alaska 154. Different acts should be harmonized unless a different purpose is shown plainly or with irresistible clearness. *State v. Shattuck,* 38 Atl. 81.

Accordingly, if a reasonable purpose may be attributed to Section 2 (a) of Chapter 22, which does not traverse or destroy Section 19-1-1, the Territory's General Savings Clause, then both statutes should be read in pari materia. Particularly compare *Great Northern Ry. Co. v. United States,* 155 Fed. 945, 962, affirmed 208 US 452.

Legislative Background Considerations.

Section 2 should be viewed in the full texture of the law and economy to which it applies. Ofttimes language draws to itself or includes persuppositions not always commensurate with what the authors intended. Words may carry a meaning to insiders which is not within the sure discernment of those viewing the law from a distance. It is the *reason* of the law that should prevail. *Acheson v. Fujiko Furusho,* (9 CCA, 1954) 212 F2d 284, 295.

The intent of the Legislature should be viewed from what considerations motivated the legislators at the particular time and place, and in the setting in which they repealed the statute. This Court recognized, in *Hess v. Mullaney,* (supra) that members of the Legis-

lature necessarily enjoy a familiarity with local conditions which Courts do not have. See Footnote 7, 213 F2d 635, 643, 15 Alaska 40, 56.

The favorable consideration and attention given by the legislators to incorporated cities and independent school and public utility districts (from which legislators are elected) cannot be minimized or overlooked. Even under the initial provisions of the Alaska Property Tax Act (Chaper 10, Session Laws of Alaska, 1949, Appendix "A", page 1) special care was made to assure that revenues collected thereunder would be directly channeled to the various cities and school districts. Under Section 4 of the Act taxes within the school districts, cities or public utility districts, were to be "assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district" and immediately turned over to the "city treasurer," "the district school board" or, impliedly, the public utility district treasurer.

The financial precariousness of municipalities, school and public utility districts preceding the convening of the 1953 Territorial Legislature was a matter of common knowledge to all persons in Alaska at that time.[5] The welfare of these small governing

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[5]In Governor Ernest Gruening's message to the 1953 Territorial Legislature, reprinted in both the House and Senate Journals for that session, the former Governor warned:

> "* * * very nearly all incorporated towns have issued bonds which in some cases threaten to exhaust their statutory debt limitations. Such indebtedness has an adverse effect on them in two ways: first, it prevents them for some years in the immediate future from helping themselves to meet fiscal emergencies that may, and too often do, arise. Second, it places

bodies being of deep and paramount concern to the 1953 legislators, they were rightfully disposed to take every precaution that no claim or right possessed by these political subdivisions would in any way be jeopardized, questioned or imperiled.

It was in this general atmosphere that Section 2 (a) of Chapter 22 was drafted.

The Legislature's Purpose in Enacting Section 2 (a).

The Territorial Legislature manifested its protective attitude towards Alaska's small communities when it enacted Section 2 (a) of Chapter 22 and affirmatively assured them of the right to collect all taxes levied and assessed up to and including the year 1952, *together with the recovery of any taxes levied and assessed "during the current fiscal year."* (Emphasis added.) It is vital to appellant's argument that this Court take cognizance of the important *additional right* in the form of a pecuniary advantage that was being allowed municipalities, schools and public utilities under Section 2 (a) but denied to the Territorial Government.[6] Cities and districts were authorized to

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them in the position of neglecting other needed and important public works in order to meet minimum educational demands. * * *" See Senate Journal, 1953, page 59.

[6]In the opinion filed by the lower Court, the District Judge answered appellant's explanation of Section 2 (a) in this fashion: "Plaintiff also argues that Section 2 of the repealing act was not intended to be a savings clause, but was intended to 'afford' or 'allow' municipalities, school and public utility districts additional revenues by allowing them to still levy and assess taxes previously accrued and to accrue during the fiscal year. This logic may be likened to arguing that a revenue act does not create a revenue tax but is levied only for the purpose of collecting revenue; and is wholly unsound. * * *" (R. 64.)

continue to levy, assess and tax property "during the current *fiscal period*" (Emphasis added) or into the midyear of 1953, the ordinary fiscal year extending from June 1 until May 31; whereas, the appellant was completely prohibited from levying and assessing any taxes after the year 1952.

In other words, insofar as municipalities, school and public utility districts are concerned, the Alaska Property Tax Act was to continue in full force and effect up to the end of the "current fiscal year" of each designated city and district; while, on the other hand and insofar as the Territorial Government was concerned, the Alaska Property Tax Act was repealed as of December 31, 1952.

Perhaps the most definitive illustration of this point is to pose it in the form of a question:

> Had it not been for Section 2 (a), would the municipality, school and public utility districts have had the right to *continue* to levy and assess taxes under Chapter 10, Session Laws of Alaska 1949 "during the current fiscal year" of 1953?

The answer is self-evident and supports appellant's contention that Section 2 (a) has a purpose and design all its own, the giving of a *right* to municipalities and school and public utility districts to continue collecting taxes to a date beyond that allowed by the appellant.

One of the principal errors committed by the lower Court was its accentuating one part of Section 2 (a) and completely ignoring the remainder thereof. It is

unfair to merely interpret and construe that portion of Section 2 (a) which holds that the repealing section of Chapter 22 shall not be applicable to "any taxes which have been levied and assessed by any municipality, school or public utility district" and deny any effect, recognition or purpose to the all-important concluding language within the very same section and sentence which reads:

> "* * * or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; * * *".

Particularly is this so when one of the most prevailing rules of statutory construction makes it mandatory that Courts exercise every possible effort to reconcile statutes on the same subject so that they can stand together. The whole underlying objective of the doctrine of pari materia would be perpetually frustrated if courts could interpret statutes in a piece-meal fashion.

Ordinarily, a statutory paragraph, whether encompassed within a "section" or "subsection" is designed to accomplish a single and dominant objective. In reading Section 2 (a), it is significant that the Legislature saw fit to consolidate the right of the cities and districts to recover the taxes due and owing them from previous years, together with the right of these same cities and districts to levy and assess taxes for the current fiscal year. Admittedly, at first blush, it may appear that two different purposes expressed within the same paragraph; in fact, within the same sentence. However, if both phrases of the sentence are

viewed as coherent or integral parts of a whole, one complementing the other and both tending towards the same end, any imaginary difference becomes reconciled and both phrases are accomplishing one principal objective. A section should be read, construed, and considered as a whole. Therefore, if appellant's premise—which it earnestly believes to be so compelling as to be conclusive—is accepting, that the dominant objective of the Legislature was to allow only cities and districts and not the Territory to recover taxes "during the current fiscal year", 1953, then the subservient or incidental right of these political subdivisions to recover past taxes was merely a superabundance of caution to assure that the inclusion of the additional benefit would in no way affect existing right to recover the delinquent taxes for the years 1949 through and including 1952. It is not unreasonable to deduce that had Section 2 (a) merely "saved" taxes for the "current fiscal year", a taxpayer would have contended this was a "special savings clause" and, therefore, precluded the cities and districts from recovering any delinquent taxes for the preceding years when the Alaska Property Tax Act was in effect.

Appellant is confident that had the Court explored further into the legislative intent, it would also have found that this was the principal purpose of Section 2 (a).

To repeal or limit a general savings clause by a subsequent act requires an irreconcilable conflict. It must appear that the two statutes cannot stand together. Or, as the same thing is at time expressed, a statute

couched in clear and explicit terms is not overthrown by possible, but not necessary, implications flowing from after legislation. *Great Northern Ry. Co. v. United States,* (supra); *State of California v. United States,* 75 F2d 41, 42; *Boston Sand & Gravel Co. v. United States,* 278 US 41, 73 L. ed 170; *United States v. Fixico, et al.,* 115 F2d 389; *United States v. Borden Co.,* 308 US 188, 84, L. ed 181, 188; 1 *Sutherland's Statutory Construction,* 3d Ed., Section 2012. The necessary reciprocal repulsion that must exist for Section 2 (a) of Chapter 22, Session Laws of Alaska 1953 to limit or void the application of Section 19-1-1 ACLA 1949 is not here present. There can be attributed a distinct purpose for both enactments and their co-existence should have been reconciled.

(1) Even if it be assumed that Section 2 of Chapter 22, SLA 1953 were a special savings clause, it could not nullify the continuing rights and liabilities saved under a general savings clause if such was not the intention of the Legislature.

Had the Legislature intended to cancel, repeal and abrogate all accrued and unpaid taxes levied and assessed under Chapter 10 it is inconceivable that it would have excused hundreds of thousands of dollars in unpaid taxes in the casual manner set forth in Section 2 (a). Surely a dedication of that great magnitude was deserving of a "section" or "subsection" all it own—rather than to be meshed together in a single sentence expressing a possible dual objective. As will be discussed more fully hereafter, the legislators were not unaware of language which would have clearly, accurately, precisely and unequivocally stricken the payment and collection of all unpaid taxes for

the years involved. The District Judge refused to admit in evidence a properly certified copy of the original House Bill No. 3, which eventually became Chapter 22. Section 2 of that Bill, rejected by both legislative bodies, read as follows:

> "Section 2. That all accrued and unpaid taxes on real property and improvements, and personal property, boats and vessels, levied under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, are hereby cancelled, repealed and abrogated, and declared null and void."

Thus, that which the Legislature had laid to rest has had the breath of life restored to it by the lower Court.

Assuming, arguendo, that Section 2 (a) is a special savings clause, the same canons of construction discussed above apply. In *Commonwealth v. Budd Realty Corp.,* 28 At. 2d 132, 135, the Court stated:

> "* * * while a specific savings clause, if any, many take precedence over a general savings clause, and while taxing statutes must be strictly construed, we feel that these considerations should not outweigh the intention of the Legislature which a broad view of the situation reveals."

The case of *Great Northern Ry. Co. v. United States,* 155 Fed. 945, is a case particularly deserving of attention for the reason that it also involved the interpretation and application of a special savings clause *in a criminal proceeding.* In 1906 Congress passed the Hepburn Act, 34 Stat. 584, which amended

and reenacted the Elkins Act, 32 Stat. 847. The defendants were indicted the following year for having previously violated the defunct Elkins Act by giving freight rebates to a grain shipper. The subsequently enacted Hepburn Act contained a blanket repealer or "specific savings clause" reading:

> "* * * but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law."

The defendants argued that the special savings clause in the Hepburn Act saved the Government's right to only prosecute criminal actions which were pending when the later Act was passed and that Congress had shown an intent to preserve these liabilities alone, thus rendering the general savings statute inapplicable, an argument not unlike that advanced in the District Court by the appellees herein. The Circuit Court of Appeals for the Eighth Circuit refused to accept this argument, declaring:

> "* * * In these circumstances we are persuaded that the special saving clause can be accorded reasonable purpose and operation by treating it as intended only to save such causes from what, in its absence and in the presence of the general saving clause, would be the effect of the amendments upon them and we accordingly hold that, rightly interpreted, it does not cover any part of the particular subject of the general saving clause, and, therefore, does not by necessary implication manifest an intention to release or extinguish penalties, forfeitures, and liabilities for the en-

> forcement of which no clause was then pending." (pg. 964)

The argument that a specific savings clause controls the provisions of the Territorial General Savings Clause has been denounced by this Court within the past year.

In *Coughlan v. United States of America,* 225 F2d 677, 15 Alaska 659, the appellant therein (defendant) contended that the General Savings Clause was nullified by Section 16 of Chapter 196, Session Laws of Alaska 1955, an Act integrating the Bar of Alaska into a Territorial-wide Association. That Section reads as follows:

> "Section 16. Repeal. The following provisions of law are expressly continued in force and effect to and including June 30, 1955, but thereafter they shall be deemed repealed in their entirety; * * *."

The theory advanced was that while the judgment rendered against the appellant remained valid so long as the old Act was in force, it was obliterated by the appeal not being completed prior to June 30, 1955.

This Court declined to give such an "absurd construction of the above-quoted provision" (225 F2d 667, 679) and held that by virture of the Territory's General Savings Clause, Section 19-1-1 ACLA 1949, as amended, the defendant's disbarment continued beyond June 20, 1955, nothwithstanding the alleged "special savings clause". And see *Stringer v. United States,* 225 F2d 676, 15 Alaska 656, wherein the same

General Savings Clause was held to authorize the valid and continuing appeal in this Court of a disbarment order notwithstanding the defendant's contention that "the new act is an entire substitute" for the Act under which defendant was disbarred.

There is an old well-known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect. Compare *United States v. Wittek,* 93 L. ed 1406, 337 US 346.

In *Dollar Saving Bank v. United States,* 19 Wall. (U.S.) 227, 239, 22 L. ed. 80, 82, the Court stated:

> "* * * The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him (the King of England) in the least, if they may tend to restrain or diminish any of his rights and interests. * * * The rule thus settled respecting the British Crown is equally applicable to this Government, and it has been applied frequently in the different States, and practically in the Federal Courts. It may be considered as settled that so much of the royal prerogative as belonged to the King in his capacity of *parens patriae,* or universal trustee, enters as much into our political state as it does into the principles of the British Constitution. * * *"

B. ONCE IT WAS DETERMINED AND ESTABLISHED THAT AN AMBIGUITY EXISTS IN THE STATUTE (CHAPTER 22, SLA 1953) THE COURT WAS UNDER A DUTY TO MAKE USE OF ALL AVAILABLE INTERPRETATIONAL AIDS TO DETERMINE THE TRUE MEANING AND INTENT OF THE STATUTE.

Although the lower Court refers to the "obvious intent" and "clear language" of the Legislature, the Court conceded the existence of an ambiguity in the wording of Chapter 22, Session Laws of Alaska, 1953. See Court's Opinion, R. 65. The Court, among other things, stated:

> "* * * the Court may take judicial notice of the history of the passage of this particular act to determine the meaning of terms and expressions if they are in any way ambiguous. * * *"

Following the assertion, above quoted, the Court proceeded to examine the "history" of the passage of House Bill No. 3, which eventually became Chapter 22, by examining the House Journal of which it could take "judicial notice".[7] It is appellant's position that once having determined and established that an ambiguity existed, the Court was then under a duty to make use of all available interpretational aids to ascertain the true meaning and intent of the statute. Mere reference to the Territorial House Journal would not disclose the *full* history of the Act because of the very limited data contained therein. To seek out the mean-

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[7]In retrospect, it is believed the Court mistakenly applied the "enrolled bill rule"—which provides that a Court cannot look beyond the journals, and the bill as enrolled and filed with the Secretary of State to determine the validity of the *passage* of the Act—to a legal situation demanding the inspection of all legitimate evidentiary aids possible to determine the true interpretation of an ambiguous statute.

ing of words in an ambiguous statute, they should be submitted to the test of *all* appropriate maxims of statutory construction together with any documentary and other proof which does not violate the rules of evidence.

(1) Because of the particular circumstances existing in Alaska, the Court should consider any and all extrinsic aids which will help ascertain and establish the true legislative intent in passing Chapter 22, Session Laws of Alaska 1953, and not limit itself to only those matters of which it can take judicial notice.

When a Court or jury is seeking to ascertain the existence or non-existence of a fact that are not restricted to only matters of which the Court may take "judicial note". In Volume 2, Sutherland's Statutory Construction, 3d Edition, 320 321, Section 4505, the late Professor Sutherland whose treatise is still one of the recognized authorities in this area of law, admonished the Courts with these words of caution:

> "The preceding criticisms of present techniques in interpretations do not mean that the interpretive process can or should be left exclusively to intuition. The dangers of usurping the legislative function in the guise of interpretation are all too apparent. The criticisms merely insist that the formalisms of the present rules founded upon nineteenth century fallacies concerning meaning and language may effectively cloak judicial usurpation of legislative power. The substance of the criticism is this: independent judicial determination arrived at exclusively from the reading of the words in the statute does not insure accurate interpretation and thus for the court to assert

> thtat the statute is clear and unambiguous is merely to assert that the statute as read by the court produces a result which is satisfactory to the court. It does not necessarily mean that as read it reflects the legislative intent."

It is fitting to initially examine the effect of the self-limitation imposed by the lower Court when it refused to consider evidentiary matter beyond that of which it could take judicial notice. For all purposes such a ruling restricted the sources of enlightenment to the Territorial House Journal.

Neither the Alaska Senate nor House Journals, maintained by the Legislature, can in any way be likened to the Congressional Record. This latter government printed publication contains a verbatim and chronological entry of almost every proceeding in both Houses of the United States Congress, together with reports, comments, and other expressions of view declared openly or in writing by law-makers or committee members on the various bills being considered. Even recommendations and messages from persons in the judicial and executive branches of the Government are often included therein. Therefore, when a Court takes judicial notice of the Congressional Record, it is looking to a wealth of significant and pertinent data which promises to lend material aid in finding the true intent of the Congress in passing a particular statute.

Contrasted with the Congressional Record, the Alaska House and Senate Journals are almost void of

helpful information. This Court's attention is called to the history of House Bill No. 3 as it appears in the House Journal. (See Appendix "G", pages 36-54.) No reason, apparent or otherwise, appears at any time for any course of action taken by either House of the Legislature. Recommendations by different committees are made without any discernible basis. No debates or arguments are recorded. The testimony of witnesses is unknown. The Journals simply record the title of a bill and a brief summary of the legislative action taken thereafter. No section or provision of law is ordinarily printed therein, although there is an occasional exception. At no time is the original measure or bill printed therein.

It is no reflection upon legislative integrity, nor criticism of legislative methods to say that State and Territorial Journals are often hurriedly made up, written by clerks, ofttimes inexperienced and in some instances overburdened with work. As the session advances and the business accumulated, the saving of time becomes more important and the reading of the journal of preceding days is ofttimes dispensed with, so that mistakes fail of correction and unfortunately pass to forms of "legislative history".

It is also a notorious fact that in many cases, and to a great extent in all cases, the journals are not made up until after the legislative session has closed. They are then put into such methodical shape as can be made up of the loose and disconnected memoranda noted from day to day as the legislative session progresses. These facts justify courts in attaching less

weight to journals of legislative proceedings as would bear upon legislative intent and conversely, make it necessary to look to other acceptable evidence bearing on the purpose of the law. Compare *In re Taylor,* 55 Pac. 340; *Homrighausen v. Knocke,* 50 Pac. 879; *Duncan v. Combs,* 115 S.W. 229; *People ex rel. Attorney General v. Burch,* 47 N.W. 765; Volume 1, *Sutherland's Statutory Construction,* 3d Edition, page 237, Section 1410, Footnote 1. Before a matter may be judicially noticed it must be "known"—that is, well-established and authoritatively settled. See 4 *Wigmore* on Evidence, Section 2580; 20 Am. Jur. 50, *Evidence,* Section 19. Although the issue is not raised herein by appellant there is a serious question whether the Alaska Journals contain data of such a certainty as to preclude challenge.

From the above, it is evident that the lower Court has set a precedent which will shackle the judiciary in Alaska from hereafter considering any extrinsic evidence that will shed light on the *subjective* intent of a particular legislative body. It is wholly unreasonable and flies in the face of reality to say that the intent of the 1953 Territorial Legislature must be determined by looking solely to the House Journal, a publication giving little more than a thumbnail sketch of what transpired during the legislative session.

It thus becomes imperative that extrinsic—or any proper evidence—be available to ascertain the intent of a legislature which inevitably is primarily made up of laymen. By "proper evidence" appellant means that type proof which does not transcend the accepted

rules of evidence. After all, "judicial notice" does no more than relieve a party from having to submit formal proof of a *fact* which has been established to be a matter of common knowledge. *Mills v. Denver Tramway Corporation,* (10th CCA) 155 F2d 808. However, if an essential fact is not common knowledge, no good reason is suggested why it cannot still be established by other competent and admissible evidence.

When accurate means of ascertaining subjective intent are available they should be considered. This is not so much a rule of law as a simple principle of logic, in that it assures reliability rather than speculation.[8] Canons of construction of writings are merely designed to aid in determining the intent of the writer by objective methods. Far more rewarding and directly bearing on the intent of a particular legislature would be such extrinsic aids as the following:

Written or printed reports of legislative standing and special committees. Compare *Church of Holy Trinity v. United States,* 143 US 457, 464; *Gooch v.*

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[8]Within this very past month, this Court has indicated the importance it attaches to ascertaining what is, in fact, the true intent of the lawmakers when enacting a particular statute. In *Kaline v. United States,* No. 14,635, decided by this Court on June 11, 1956, this Court apparently on its own initiative, made an exhaustive search of the Congressional Record to "ascertain the *intent* of Congress" in passing a certain provision in the Universal Military Training and Service Act of 1951. This Court also examined "The Conference Report of the managers on the part of the House" which is found in U.S. Code Congressional and Administrative Service, 82d Congress, First Session, Volume 2, p. 1513. And the comments of a Senator made in the Senate were looked to for some indication of what was intended.

United States, 297 US 124; *Hood Rubber Co. v. Commissioner of Corporations and Taxation,* 167 N.E. 670, 70 A.L.R. 1. Written or printed statements made by the draftsmen of the proposed bill, as to their understanding of its nature and effect. *United States v. Whyel,* 28 F2d 30; and compare *United States v. Rehwald,* 44 F2d 663 (S.D. of California). Written or printed statements made by the executive branch of government while the legislators were considering related bills. See *Shelton Hotel Co. v. Bates,* 104 Pac. 2d 478. Written or printed opinions by the Attorney General made at a time when the bill was being considered. See *Red Canyon Sheep Co. v. Ickes,* 98 F2d 308; *Doyle v. Fox, et. al.,* No. 14,601 (CAA 9th), filed June 12, 1956. Written or printed statements of witnesses or interested parties urging amendments or changes in the proposed bill. *Securities & Exchange Commission v. Robert Collier & Co.,* 76 F2d 939 (CCA 2d 1935); *Penn Mutual Life Insurance v. Lederer,* 252 US 523, 534, 64 L. ed 698.

The drafting of bills requires an experienced hand. This Court is undoubtedly aware that few States or Territorial Legislators are equipped with the talent necessary to author a bill which will weather legal attack. Most legislation is copied or borrowed from the larger states who hire specialists to perform this difficult chore. Although the Attorney General is each jurisdiction ordinarily assists in this highly skilled field, his staff is generally limited and their time fully occupied with other duties of office. The lack of proficiency in the writing of laws has undoubtedly been

the cause of much litigation. In 1953, the same Legislature which drafted Chapter 22, passed an Act wherein they repealed a Territorial law (Section 65-9-34 ACLA 1949) in the title of the Act and yet omitted to do so in the body thereof. See Chapter 19, SLA 1953.[9]

If we accept Professor Sutherland's analysis that statutory construction is but a fact issue, and recognize that words are at best inexact tools of expression, then it should follow that all relevant aids, extrinsic or otherwise, should be sought in construing laws. *Harrison v. Northern Trust Co.,* 317 US 476, 87 L. ed 407; *United States v. American Trucking Associations, Inc., et al,* 310 US 534, 84 L. ed 1345. Particularly is this so where the exigencies and circumstances demand this approach as a practical matter. In such instances all legitimate and reasonable means should be used to arrive at the legislative intent and the sources of enlightenment should not be limited. As early as 1804 Chief Justice John Marshall of the Supreme Court of the United States stated:

> "* * * Where the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes every thing from which aid can be derived; * * *." United States v. Fisher et al., 2 Cranch (U.S.) 358, 386, 2 L. ed 304, 313.

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[9]This Legislature also passed an Act creating a Legislative Council, Chapter 69, SLA 1953, which has, among other duties, that of preparing a "legislative program in the form of bills or otherwise".

(2) Because of the ambiguity of the statute and the direct bearing on the legislative intent, the Court should have considered the bill originally introduced and the amendments thereto, which preceded the final adoption of Chapter 22, SLA 1953.

As stated above, the Court refused to admit into evidence and examine the wording originally employed by the author of House Bill No. 3, which was the genesis of Chapter 22. Section 2 of that Bill, when initially introduced, read as follows:

> "Section 2. That all accrued and unpaid taxes on real property and improvements, and personal property, boats and vessels, levied under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, are hereby cancelled, repealed and abrogated, and declared null and void."

As the legislative history reveals, House Bill No. 3 was introduced on January 27, 1953. (See Appendix "G", page 36). Within two days thereafter the Committee on Judiciary and Federal Relations reported this Bill back to the House with the recommendation that it "do pass" with the following amendments:

> "The title be changed to read:
> 'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency.'
> *Section 2 of HOUSE BILL No. 3 be deleted."* (Emphasis added.)

The Bill was then referred to the House Committee on Ways and Means. Within less than a week that

Committee recommended that the changes suggested by the Judiciary Committee, including the deletion of Section 2 quoted above, be adopted. On February 11, 1953, the Bill was passed by the House with the above changes. Thus, the issue of whether or not "all accrued and unpaid taxes" should be "cancelled, repealed and abrogated, and declared null and void" was squarely before the House and rejected in what must be interpreted as an intentional, deliberate and positive act of that body, clearly manifesting its refusal to excuse any unpaid property taxes due and owing prior to the year 1952.

When House Bill No. 3 reached the Alaska Senate on February 12 of that same year, it was referred to the Senate Committee on the Judiciary and Federal Relations. (Appendix "G", page 43). One week later that Committee returned the Bill with a recommendation that the following amendment be made:

"Insert new Section 2 as follows:

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in sub-section (a) of this section, which have been granted under the provisions of Section 6 (h) of Chapter 10, Session Laws of Alaska 1949."

No written report or accompanying memorandum appears in the House or Senate Journal suggesting why this new section was introduced. Even if such document existed, it would not have appeared in the Legislative Journal, for such practice has not been adopted in Alaska as is self-evident by a mere cursory examination of either Journal.

House Bill No. 3 was thereafter referred to the Senate Committee on Taxation and Revenue and was subsequently returned without recommendation but "that the amendments offered by the Judiary Committee be adopted". (Appendix "G", page 44). Two days later the title was amended to include "excepting from repeal certain taxes and tax exemptions". There being no objection, this amendment was also adopted. (Appendix "G", page 46). The Bill passed the Senate in this form and upon being returned to the House the amendment inserted by the Senate was adopted with no objection. Although the Bill was subsequently vetoed by the Governor (Appendix, pgs. 50-53), it passed when a two-thirds majority in each legislative House over-rode the veto. (Appendix, pgs. 53-54).

It is significant to notice at this time that Senate Bill No. 5, identical to House Bill No. 3 in its original form, was completely ignored and abandoned by the Senate, together with the language in Section 2 thereof which also sought to have cancelled, repealed and abrogated all "accrued and unpaid taxes".

In *Brooks v. United States,* 337 US 49, 51, 93 L. ed 1200, an automobile in which two servicemen were

riding was struck at a highway intersection by an army truck causing the death of one and personal injuries to the other, under circumstances which, in the case of persons not members of the Armed Forces of the United States would have given rise to a right of action against the sovereign under the Federal Tort Claims Act. It was contended by counsel for the United States that because the injured persons were servicemen they could not maintain an action under that Act. In refutation of this point, the attorney representing the injured surviving serviceman and the estate, called to the Court's attention, the bills originally introduced in Congress, which numbered eighteen, all of which had originally contained exceptions denying recovery to members of the Armed Forces but which in the final act removed such exceptions. The effect of deleting the intended exceptions from the final enactment was discussed by the Supreme Court in this language:

> "More than the language and framework of the act support this view. There were eighteen tort claims bills introduced in Congress between 1925 and 1935. All but two contained exceptions denying recovery to members of the armed forces. When the present Tort Claims Act was first introduced, the exception concerning servicemen had been dropped. What remained from previous bills was an exclusion of all claims for which compensation was provided by the World War Veterans Act of [June 7] 1924—43 Stat 607, c 320, 38 USCA §421, 11 FCA title 38, §421, compensation for injury or death occurring in the first World War. HR 181, 79th Cong—1st Sess.

> When HR 181 was incorporated into the Legislative Reorganization Act, the last vestige of the exclusion for members of the armed forces disappeared. See also Note 1, Syracuse L Rev 87, 93, 94."

and see *Carey v. Donohue,* 240 US 430, 437, 260 L. ed. 726, 729; *Kelm v. Chicago St. P. M. & O. Ry. Co.,* 206 F 2d 831, 833; *Nicholas v. Denver & R. G. W. R. Co.,* 195 F 2d 428, 432; *Burnham Hotel Co. v. City of Cheyenne,* 222 Pac. 1, *Bender v. City of Fergus Falls,* 131 NW 849; *United Mutual Life Ins. Co. of Indianapolis, Indiana, v. State ex rel. Att. Gen.,* 108 SW 2d 484; *Crook et al. v. Commonwealth,* 136 SE 565, 567, 50 ALR 1043, 1047; *Ex parte Boehme,* 255 SW 2d 206.

In *Love v. Wilcox, et al.,* 28 SW 2d 515, 523, 70 ALR 1484, 1498, the Supreme Court of Texas stated:

> "No court could justify putting into a statute by implication what both Houses of the Legislature had expressly rejected by decisive votes. * * * Once the legislative intent is ascertained, the duty of the court is plain. To refuse to enforce statutes in accordance with the true intent of the Legislature is an inexcusable breach of judicial duty, because an unwarranted interference with the exercise of lawful, legislative authority."

The original of House Bill No. 3 was on file with the Secretary of Alaska and a proper certified copy thereof was secured by appellant from that public official. The authenticity was at no time questioned. However, the Court refused to consider this important evidentiary matter solely on the grounds that it was a document of which judicial notice could not be

taken. The changes made in House Bill No. 3 from its original language to its final passage is extremely pertinent and casts a revealing light on the legislative intent. Moreover, the Senate's implied refusal to adopt language which would have excused the unpaid taxes, as was expressed in Senate Bill No. 5, also was deserving of great weight and should not have been ignored.

House Bill No. 3 offered subjective evidence on the intent of the Legislature. The maxim expressio unius est exclusio alterius upon which the lower Court greatly relied, is a mere objective test and not deserving of the same consideration as evidentiary matter of a subjective nature.[10]

The Wilmington Trust Co. v. United States, and State v. Showers cases as controlling precedent for the legal conclusions arrived at by the District Court.

The Court below placed great reliance on two cases, *Wilmington Trust Co. v. United States,* 28 F2d 205, and *State v. Showers* (Kan.), 8 Pac. 474.[11]

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[10]The maxim expressio unius est exclusio alterius is a rule of construction and not of substantive law, and it can never override clear and contrary evidence of legislative intent. See *Neuberger v. Commissioner of Internal Revenue,* 311 U.S. 83, 85 L. ed. 58; *Springer et al. v. Government of the Philippine Islands,* 277 U.S. 189, 72 L. ed. 845; *United States v. Barnes,* 222 U.S. 513, 56 L. ed. 291. The rule is only an aid in ascertaining legislative intent and may not be employed to defeat such intent. *Mason v. United States,* 260 U.S. 545, 554, 67 L. ed. 396, 399. *State ex rel. Curtis v. De Corps, et al.,* 16 N.E. 2d 459; *Benson v. Chicago St. P., M. & O. Ry. Co.,* 77 N.W. 798; *United States v. Hardcastle,* 10 Alaska 254; *Anderson v. Smith,* 8 Alaska 470; *Freeman v. Smith,* 8 Alaska 229.

[11]The *Showers* case was decided in 1885 and appears to be subject to the criticism made by this Court in *United Producers and Consumers Co-op. v. Held,* 225 F.2d 615, wherein the Court re-

The soundness of the reasoning in the *Wilmington Trust Co.* Case has been questioned in several instances and distinguished in others. See *New York Life Ins. Co. v. Bowers,* 34 F2d 60, 63; *Schoenheit et al. v. Lucas,* 44 F2d 476, 490; *Alker et al. v. United States,* 38 F2d 879, 883; *Hanna v. United States,* 68 Ct. Cl. 45, cert. den. 280 US 612, 74 L. ed. 654; and *Burrows et al. v. United States,* 56 F2d 465, 466. In the last cited case, the Court stated:

> "* * * The Wilmington Trust decision was analyzed and discussed by this court in the Hanna Case when it declined to follow the rule in that case. The District Court of New Jersey in the Third Circuit has likewise refused to recognize the authority of the Wilmington Trust Case, and has followed the principles enunciated by this Court in the Hanna Case. O'Brien et al. v. Sturgess, 39 F. 2d 950."

The first vivid point of distinction readily apparent between the present case and *State v. Showers,* is that the latter involved a *criminal* conviction and the defendant had been "sentenced to pay a fine of $150 and stand committed to the jail of Morris County until the fine and costs were paid". The nature of the case and the continued commitment of the defendant in jail immediately suggests that a strict interpretation was called for under those circumstances.

The second distinctive feature is the obvious difference in language in the special savings clause consid-

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ferred to several cases decided in 1901, 1911 and 1931 as being "stale authority from the late nineteenth and early twentieth century" and "outmoded". (pgs. 617 and 630.)

ered by the Court in the *Showers* case and Section 2 (a) of Chapter 22, the germane provision in the case at Bar. The particular legislation before the Supreme Court of Kansas was considered to necessarily be a special savings clause because otherwise it would have "no office to perform". As has been discussed above, Section 2 (a) of Chapter 22, which was before the Alaska District Court does have an "office to perform", an important one, and therefore should not be labeled a "special savings clause".

CONCLUSION.

In its opinion, the District Court concluded that all taxes or unpaid taxes due and owing the Territory for the years preceding the repeal were to be excused "* * * however unjust such result may be as to those taxpayers who paid the property tax without protest." Should this conclusion prevail, the individuals who have intentionally violated and resisted complying with this particular Territorial revenue law stand to be endowed with favor; while the taxpayers who acted in a lawful, diligent manner and paid their taxes when due will be unfairly penalized. The existence of government would be short-lived if all citizens could escape their lawful burden of sharing in the cost of government by such inequitable tactics. An intentional act or omission to act which results in the violating of a tax statute obviously and directly tends in a marked degree to bring about a result which imposes on the interest and welfare of the public as a whole and is

therefore against public policy and not to be condoned. Moreover, it is the policy of the law to insure the collection of all taxes and whenever it is possible, on any theory to do so, the Courts construe the statutes to accomplish that result. *Nassau County v. Lincer,* (supra).

The Alaska Property Tax Act assessed and taxed the "person" or "taxpayer" and obviously contemplated that such tax is a personal obligation thereunder. This conclusion, evident by the wording of the statute, is further fortified when it is recognized that the tax is also on personal property which is easily removed or dissipated. When a personal obligation exists, the remedy to recover the taxes due and owing is implied, notwithstanding there being no express remedy in the Act.

When Section 2 (a) of Chapter 22 is read in the light of its context and setting, there is no sustainable basis for the contention that this Section was designed to be a "special savings clause". Furthermore, if at all possible, the lower Court should have made every effort to substantiate and reconcile both statutes. It would not have been difficult for the Court to have found a reasonable purpose for Section 2 (a) which does not infringe on the rights given the Territory under the general savings clause.

When a statute is found not to speak for itself and an uncertainty exists as to the expressions used therein, it is the duty of the Court to ascertain the will of the Legislature and avoid judicial legislation. In determining the intent, the Court should not re-

strict its search to sources embodied in the published act, such as the title of the act, nor to canons of construction which are mere objective tests. The District Court should have considered sources outside the printed page, particularly such extrinsic aids as House Bill No. 3 and Senate Bill No. 5 which bring out the subjective intent of the lawmaking body which passed the Act under consideration. Appellant is confident that if the lower Court had considered all statutory aids, it would have been as equally convinced as is appellant that it was not the intent of the Legislature to excuse the unpaid and accrued taxes due and owing the Territory.

One of the most apparent signs of legislative intendment is the rejection by the Legislature of language which would otherwise have conferred certain rights or benefits such as the excusing of taxes due and owing. The necessary inescapable conclusion is that by rejecting such language, the Legislature did not intend to allow those rights or benefits. Under such circumstances, Courts should not thereafter judicially legislate and rewrite into law that which has been specifically excluded.

For the reasons stated in this brief, it is respectfully requested that the judgment of the District Court be reversed and modified so that the appellees are held to be personally liable for the unpaid taxes due and owing by them to the appellant for the years 1949 through and including 1952 and that Section 2 (a) of Chapter 22 be declared not a special savings clause or a provision of law in any way nullifying,

abrogating or destroying the right of the appellant to enforce and pursue all rights under Chapter 10, Session Laws of Alaska 1949, possessed and reserved to it by the Territory's General Savings Clause. (Section 19-1-1 ACLA 1949, as amended.)

Dated Juneau, Alaska,
June 22, 1956.

Respectfully submitted,

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(Appendices Follow.)

Appendices.

Appendix "A"

CHAPTER 10, SESSION LAWS OF ALASKA, 1949.

Section 1. TITLE. This Act may be cited as the "Alaska Property Tax Act".

Section 2. DEFINITIONS. As used in this Act, the following words and terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) The word "assessor" means an authorized representative of a Board of Assessment and Equalization designated to perform the duties of making assessments in a judicial division.

(b) The word "board" means a Board of Assessment and Equalization.

(c) The word "Collector" means the Tax Commissioner or his authorized representative, employee or agent designated by him.

(d) The word "division" means judicial division as understood and recognized in Alaska.

(e) The word "improvements" includes all buildings, structures, fences and additions erected upon or affixed to the land, whether or not the title of the land has been acquired by any particular person.

(f) The word "include", when used in a definition contained in this Act, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The word "person" means and includes any individual, trustee, receiver, firm, partnership, joint

venture, syndicate, association, corporation, trust, or any other group acting as a unit.

(h) The words "personalty" or "personal property" shall mean all machinery, equipment, household goods, and other tangible personal property which is located on or used in connection with particular land, or owned, possessed or used independently of any particular land.

(i) The word "property" means and includes real property, improvements, and personalty, as herein defined.

(j) The words "real property" or "land" mean any estate or interest therein, including permit or license rights, and improvements thereon, and shall include all timber or patented lands.

(k) The words "Tax Commissioner" means the Tax Commissioner of the Territory of Alaska.

(l) The words "tax lien" embrace liens for penalties, interest and costs as well as for unpaid taxes.

(m) The word "Territory" means the Territory of Alaska.

Section 3. LEVY OF TAX. For the calendar year of 1949, and each calendar year thereafter there is hereby levied, and there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory at the rate of one per centum of the true and full value thereof. For the purposes of this section the assessed value of unimproved, unpatented mining claims which are not producing, and nonproducing patented mining

claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at $500.00 per each 20 acres or fraction of each such claim, except that if the surface ground of any such claim is used for other than mining purposes and has a separate and independent value for such other purposes, the valuation as pertains to such nonmining uses and of improvements incidental to such uses shall be according to the full and true value thereof.

Section 4. TAX UPON PROPERTY WITHIN INCORPORATED CITIES AND DISTRICTS. The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city or town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district, by and at the expense of the municipalities and districts prorated proportionately between each, provided that amounts levied but which prove uncollectible, and the cost of foreclosure on delinquent accounts shall be borne by the city or school and public utility district.

All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts as follows:

(a) As to cities which are not a part of an independent school district the municipal tax collection authority shall turn the amount of tax collected over to the city treasurer.

(b) As to incorporated school districts the tax collectors thereof shall turn the amount of tax collected over to the district school board.

(c) As to cities which are part of an independent school district the amount of taxes collected shall be turned over to the city treasurer. The city treasurer is hereby authorized and empowered to turn over to the school board such part of the funds collected as may be determined by the city council from time to time necessary to efficiently carry on school functions in said school district. Such cities may assess and collect an additional tax on real and personal property situate in the said cities not to exceed the amount allowed by law, which tax shall be assessed and collected at the same time and in the same manner as the tax provided in Section 3 of this Act, which said funds shall be used by said cities for general municipal purposes. Regarding that part of independent school districts outside of town bounds, the tax collection authority therein shall turn the taxes collected over to the district school board; provided that the millage levy for school purposes shall be uniform within incorporated school districts whether said district includes another incorporated municipality or not and any unused remainder up to the maximum levy hereunder shall revert to the Territorial Treasurer except that portion collected within any incorporated municipality within the boundary of such school district in which case such remainder, unused for school purposes, shall revert to the treasury of the incorporated municipality in which it may be collected.

(d) Taxes collected hereunder within a public utility district shall be handled in a like manner to those collected in cities or other incorporated municipalities, including collection costs, remissions and school millage levy provisions as set forth herein.

(e) In all cases where such local units are to receive such tax collections, the local tax collection authority shall, upon delivery of the money as above set forth, obtain a receipt in duplicate therefor and forward the duplicate thereof to the Tax Commissioner. The time or times to be set for payment on account of such collections shall be prescribed by the Tax Commissioner. Such other accounting as may be indicated shall be made to the Tax Commissioner at such times and in such manner as may be prescribed by him.

The tax money so collected which remains after remissions have been made shall be transmitted to the Tax Commissioner at such intervals and in such manner as he shall direct, for deposit with the Treasurer, to be covered into the general fund of the Territory.

Section 5. TAX ON PROPERTY OUTSIDE INCORPORATED CITIES AND SCHOOL DISTRICTS. The tax levied under the provisions of Section 3 upon property outside the limits of an incorporated city, independent school district, or incorporated school district or public utility district in the Territory shall be assessed, collected and enforced as provided in this Act.

Section 6. EXEMPTIONS.

(a) Property shall be exempt from taxation hereunder when used exclusively for educational, religious or charitable purposes.

(b) The property of the United States, of the Territory, and of any municipal corporation, independent school district, incorporated school district, public utility district and association operating utilities under arrangement with the Rural Electrification Administration, shall be exempt hereunder.

(c) The personal property of any person to the value of $200.00 shall be exempt hereunder.

(d) The property of any organization not organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, or the property of the auxiliary of any such organization, and all monies on deposit belonging to such organization shall be exempt hereunder, except any such property which produces rentals or profits for such organization.

(e) The laws exempting certain property from levy and sale on execution shall not apply to taxes levied hereunder or to the collection thereof.

(f) New industrial, commercial and business construction shall be exempt during the period of construction and until the plants or buildings are occupied or operated, but in no case shall this exemption exceed three taxable years from the time of beginning of construction. Modifications and repairs to existing structures shall not be considered new construction under this provision.

(g) All homesteads upon which entry has been made in accordance with the land laws of the United States shall be exempt from the date of entry until one year after the date upon which patent shall have been granted and final title acquired. Such exemption shall include all improvements upon such homesteads pertaining to residential or agricultural purposes.

(h) INDUSTRIAL INCENTIVE CLAUSE: The Tax Commissioner is authorized to grant incentive exemptions hereunder in the manner and to the extent hereinafter set forth:

(1) An exemption of one-half of the tax otherwise imposed hereunder, or such other lesser fraction thereof as the Tax Commissioner may deem to be a necessary and proper encouragement to new industry as hereinafter defined, for such period not exceeding 10 taxable years from the date production is commenced, upon new plants and buildings and other installations, real estate and equipment, as are constructed and procured by new industrial enterprises, as hereinafter defined, to manufacture or process products which constitute industry new to Alaska with resultant establishment of new payrolls in Alaska.

The terms "new industry" or "new industrial enterprises" as used herein shall mean undertakings for the purpose of manufacturing or processing products not manufactured or processed in Alaska on the effective date hereof and for which plants have not already been established in Alaska.

(2) The Tax Commissioner shall establish and promulgate general standards and rules conformable to this Act for determining the eligibility of applicants for exemptions hereunder, and the extent to which exemptions for such applicants respectively are to be granted, including such factors as: permanence of the industry involved; the amount of its capital investment; whether it is a seasonal or continuous operation; whether it will likely be marginal because of distance from principal markets; transportation costs and differential in cost of production in Alaska as compared to cost of productions elsewhere; the number of resident Alaskan workmen who will be given employment; and other pertinent factors, related to improving the economy of the Territory of Alaska. He shall also consider in each case the recommendation of the Divisional Board of Assessment of the division in which the new industry is proposed to be established, which recommendation shall be obtained by the applicant in advance of the application and attached thereto. After all such factors are taken into consideration, the decision of the Tax Commissioner shall be rendered, subject, however, to final approval of the Divisional Board of Assessment. If after studying the Tax Commissioner's findings and decisions, the said Board, acting by majority of its members, is unable to agree with said decision, it shall, after reasonable notice to the Tax Commissioner and the affected new industry, hold a hearing and make the decision, which shall be final, except that when such exemption decision expires, the

position of the new industry may be re-evaluated and extension granted within the maximum limits allowed hereunder, in the same manner as provided for the granting of the original exemption.

(3) All exemptions granted hereunder shall be negotiated and consummated prior to the initial commencement of production by the applicant.

(4) Exemptions granted by the Tax Commissioner hereunder shall be applicable within or without municipalities, school districts or public utility districts.

Section 7. RETURNS.

(a) On or before the 15th day of July in the year 1949, and on or before the 15th day of March in each year thereafter, every person shall submit in duplicate to the assessor of the judicial division, a return of his property, and of the property held or controlled by him in a representative capacity, in the manner prescribed in this Act, which return shall be based on values existing as of January 1 in the same year.

(b) In every case the person making the return shall state an address to which all notices required to be given to him under this Act may be mailed or delivered.

(c) The return shall show the nature, quantity, amount and value of the property, the place where the property is situated, and said return shall be in such form as the Tax Commissioner may prescribe, and shall be signed and verified by the person liable, or his or its authorized agent or representative.

Section 8. ADDITIONAL RETURNS. The assessor may, by notice in writing to any person by whom a return has been made require from him a further return containing additional details and more explicit particulars, and upon receipt of the notice that person shall comply fully with its requirements within thirty days after its receipt by him.

Section 9. POWER TO MAKE EXAMINATIONS.

(a) An assessor shall not be bound to accept as correct the return made by any person, but if he thinks it necessary or expedient, or if he suspects that a person who has not made a return is liable to assessment, he shall make an independent investigation as to the property of that person, and may make his own valuation and assessment of the taxable amount thereof, which will be prima facie good and sufficient for all legal purposes.

(b) For the purpose of such examination, the assessor, personally or by any deputy designated by him, may enter upon any premises and may examine any property thereon, and shall have access to and may examine all property records involved, and such person shall, upon request, furnish to the assessor or deputy every facility and assistance for the purposes of such examination.

(c) An assessor may in any case examine a person on oath or otherwise, and upon request of the assessor, the person shall attend and submit himself to examination by the assessor.

Section 10. INSPECTION OF RETURN. No return made by any person under this Act shall be open for inspection by any person except officers authorized by law to administer this Act, or upon an official investigation or proceedings in court, and any Territorial employee who violates said restriction by communicating any information obtained under the provisions of this Act, except such information as is required by law to be shown on the assessment rolls, or allows any person not legally entitled thereto to inspect or have access to any return made under the provisions of this Act shall be guilty of a misdemeanor punishable under the penalty clause of this Act, and shall be discharged from his office or employment and be ineligible to hold any public office or employment for the Territory for a period of two years thereafter.

Section 11. VALUATION. Property shall be assessed at its full and true value in money, as of January 1 of the assessment year. In determining the full and true value of property in money, the person making the return, or the assessor, as the case may be, shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the property would sell at auction, or at a forced sale, either separately or in the aggregate with all of the property in the taxing district, but he shall value the property at such sum as he believes the same to be fairly worth in money at the time of assessment. The true value of property shall be

that value at which the property would generally be taken in payment of a just debt from a solvent debtor.

Section 12. ASSESSMENT. Every person shall be assessed and taxed annually on his property in the division in which the property is situated, and where any parcel of land is situated partly in one division and partly in another or partly within a municipality or school district and partly elsewhere, the assessment in respect of that parcel shall be made in the division or district within which the greater part of the property is situated. Real property and personalty shall be separately assessed.

Section 13. TO WHOM ASSESSED.

(a) Subject to subsection (b) and (c) of this section, property shall be assessed and taxed in the name of the owner or claimant or where the property is owned, occupied or claimed by two or more persons, it shall be assessed and taxed in the names of the owners, occupiers or claimants jointly.

(b) Where a verified statement is furnished showing that property has become the subject of a contract of sale or been leased by the owner to another person, the name of the other person shall be noted on the assessment roll and like notice of the assessment shall be sent to him as to the owner, in which case the taxes assessed in respect of the property may be received either from the owner or from the purchaser or tenant, or from any optionee, prospective distributee, purchaser or encumbrancer who desires to safeguard the title to the property.

(c) Land of the United States or the Territory which is held under any mining location, lease, license, agreement for sale, accepted application for purchase, or otherwise, shall be assessed and taxed in the name of the occupier according to the value of his interest therein (except as above modified in this Act with respect to certain mining claims); but no assessment or taxation in respect of land so held or occupied shall in any way affect the rights of the United States in the land.

(d) Where the property assessed is owned by two or more persons in undivided shares, each owner shall be assessed on the undivided interest at the proportion of the assessed value of the property that his undivided interest bears to the whole.

Section 14. CONTENT OF ASSESSMENT ROLL.

(a) The assessor of each division shall prepare an annual assessment roll for each division covering property outside of municipalities and school districts and public utility districts, after consideration of all returns made to him pursuant to this Act, and after careful inquiry from such sources as he may deem reliable. On the roll he shall enter the following particulars:

(1) the names and last known addresses of all persons with property liable to assessment and taxation;

(2) a description of all taxable property;

(3) the assessed value, quantity, or amount of said property and the taxes thereon;

(4) The arrears of taxes owing by any persons; and,

(5) any other information that may be required by the Tax Commissioner.

(b) It shall be a sufficient description of any property for the purposes of this Act, if there is entered on the assessment roll the best available short description of the property.

Section 15. ASSESSMENT NOTICE.

(a) The assessor, before completion of the assessment roll, shall give to every person named thereon a notice of assessment, showing the valuation and assessment of his property and the amount of taxes thereon, in such form as the Tax Commissioner may prescribe. At least 60 days must be allowed from date of such mailing within which to appeal to the Board against the assessment. He shall enter on the roll opposite the name of each person the date of giving the assessment notice which entry shall be prima facie evidence of the giving of the notice. On the back of each assessment notice shall be printed a brief summary for the information of the taxpayer, of the dates when the taxes are payable, delinquent, and subject to interest, dates when the Board will sit for equalization purposes, and any other particular specified by the Tax Commissioner.

(b) The assessment notice shall be directed to the person to whom it is to be given, and shall be sufficiently given if it is mailed by first class mail addressed to, or is delivered at, his address as last

known to the assessor; or, if the address is not known to the assessor, the notice may be mailed addressed to the person at the postoffice nearest to the place where the property is situated. The date on which the notice is so mailed or is so delivered for all purposes of this Act shall be deemed to be the date on which the notice is given.

Section 16. COMPLETION OF ASSESSMENT ROLL. The assessor shall complete the annual assessment roll for the year 1949 on or before the 1st day of September and for each year thereafter on or before the 1st day of July of that year, which shall be based on values of January 1st immediately preceding, and shall certify the same by attaching thereto a certificate in a form to be prescribed by the Tax Commissioner. Such supplementary assessment rolls shall be prepared and certified as may be deemed necessary or expedient.

Section 17. EFFECT OF ASSESSMENT ROLL. All taxes to be levied or collected under this Act shall, except as otherwise provided, be calculated, levied and collected upon the assessments entered in the assessment rolls and certified by the respective assessors as correct, subject to the taxpayers' rights of appeal and to the corrections and amendments made in the rolls pursuant to this Act.

Section 18. PROVISIONS APPLICABLE TO SUPPLEMENTARY ROLLS. All the duties imposed upon the assessor with respect to the annual assessment roll and all the provisions of this Act

relating to assessment rolls shall, so far as applicable, apply to supplementary assessment rolls.

Section 19. CORRECTION OF ERRORS BY ASSESSOR. Any assessor may correct any error, omission or invalidity made or arising in the preparation of the assessment roll at any time before the sitting of the Board. It shall be the duty of every person receiving a notice of assessment to advise the assessor of any error, omission or invalidity he may have observed in the assessment of his property, in order that the assessor may correct the same.

Section 20. TRANSMISSION OF ROLL TO THE TAX COMMISSIONER.

(a) A copy of all assessment rolls shall be certified and transmitted to the Tax Commissioner at Juneau not later than one month after the completion of same unless the time for transmission is extended by the Tax Commissioner. This shall be in addition to deposit of the assessment roll for retention in the division as required in Section 22.

(b) All corrections and amendments made in the roll pursuant to this Act or the decisions of the Board or the courts, and which are not shown on the assessment roll deposited with the collector or upon the copy transmitted to the Tax Commissioner at Juneau, shall be forthwith reported to the collector by the assessor.

Section 21: VALIDITY OF ASSESSMENT ROLLS. Every assessment roll as completed and certified by the assessor, and as corrected and amended by him from time to time in conformity

with this Act and the decisions of the Board shall, except insofar as the same may be further amended on appeal to the court, be valid and binding on all persons, notwithstanding any defect, error, omission or invalidity existing in the assessment roll or any part thereof, and notwithstanding any proceedings pertaining thereto.

Section 22. DEPOSIT OF ROLL WITH COLLECTOR. Upon a completed assessment roll being amended by the assessor in conformity with the decisions of his Board, the assessor shall deliver the roll to the collector, for retention in the division to which it applies, and the roll shall be open during office hours to the inspection of all taxpayers of the division.

Section 23. SITTINGS AND RECORDS OF BOARD. For the purpose of scrutinizing the assessment roll and its supplements, and taking corrective action thereon, or for hearing appeals in respect of any assessment rolls, or from any assessment made under this Act, the Board in each division shall sit and adjourn from time to time as its business may require, and shall record its proceedings and decisions. During all periods when a Board is not in session, its records and decisions shall be kept by the assessor.

Section 24. NOTICES BY BOARD.

(a) Where the name of any person is ordered by the Board to be entered on the assessment roll, by way of addition or substitution, for the purpose of assessment, the Board shall cause notice thereof to be

mailed by the assessor to that person or his agent in like manner as provided in Section 15, giving him at least 60 days from the date of such mailing within which to appeal to the Board against the assessment.

(b) Whenever it appears to the Board that there are overcharges or errors or invalidities in the assessment roll, or in any of the proceedings leading up to or subsequent to the completion of the roll, and there is no appeal before the Board in which the same may be dealt with, the Board may notify parties affected with the view of hearing them.

Section 25. APPEAL BY PERSON ASSESSED.

(a) Any person whose name appears on the assessment roll for any division or who is assessed in any district, may appeal to the Board with respect to any alleged overcharge, error, omission or neglect of the assessor.

(b) Notice of appeal, in writing, shall be filed with the Board within 60 days after the date on which the assessor's notice of assessment was given to the person appealing. Such notice must contain a certification that a true copy thereof was mailed or delivered to the assessor. If notice of appeal is not given within that period, right of appeal shall cease, unless it is shown to the satisfaction of the Board that the taxpayer was unable to appeal within the time so limited.

(c) A copy of the notice of appeal must be sent to the assessor as above indicated.

Section 26. APPEAL RECORD. Upon receipt of the notice of appeal, the assessor shall make a record of the same in such form as the Tax Commissioner may direct, which record shall contain all the information shown on the assessment roll in respect of the subject matter of the appeal, and the assessor shall place the same before the Board from time to time as may be required by the Board.

Section 27. NOTICE OF HEARING. Not less than 30 days before the sittings at which the appeal is to be heard, the Board shall cause a notice to be mailed by the assessor to the person by whom the notice of appeal was given, and to every other person in respect of whom the appeal is taken, to their respective addresses as last known to the assessor. The form of such notice shall be prescribed by the Tax Commissioner.

Section 28. HEARING OF APPEAL.

(a) At the time appointed for the hearing of the appeal, the Board shall hear the appellant, the assessor, other parties to the appeal and their witnesses, and consider the testimony and evidence adduced, and shall determine the matters in question on the merits and render its decision accordingly.

(b) If any party to whom notice was mailed as above set forth fail to appear, the Board may proceed with the hearing in his absence.

(c) The burden of proof in all cases shall be upon the party appealing.

Section 29. ENTRY OF DECISIONS. The Board shall from time to time enter in the appeal record its decisions upon appeals brought before it, and shall certify to the same. The assessor, upon receipt of the appeal record, and subject in every case to any appeal taken to the courts, shall enter in the assessment roll such amendments as may be necessary to give effect to the decisions of the Board.

Section 30. COLLECTION UNAFFECTED BY APPEAL. Neither the giving of a notice of appeal by any taxpayer, nor any delay in the hearing of the appeal by the Board shall in any way affect the due date, the delinquency date, the interest, or any liability for payment provided by this Act in respect of any tax which is the subject matter of the appeal. In the event of the tax being set aside or reduced by the Board on appeal, the Tax Commissioner shall refund to the taxpayer the amount of the tax or excess tax paid by him, and of any interest imposed and paid on any such tax or excess.

Section 31. APPEAL TO COURT. Any person feeling aggrieved by any order of the Board shall have the right of appeal on a de novo basis to the District Court for the Territory of Alaska in the division in which the matter is pending. Such appeal shall be pursued as nearly as may be in accordance with the procedure prescribed in Sections 68-9-4 to 68-9-14 inclusive, Alaska Compiled Laws Annotated 1949, governing appeals from a Justice's Court in civil cases and the Tax Commissioner shall promul-

gate uniform regulations adapting the above referenced procedure for perfecting such appeals.

Section 32. TIME OF PAYMENT. Taxes for a calendar year shall be payable annually the first day of February of the ensuing year. Failure to pay on said due date shall cause the tax to become delinquent and shall subject the property assessed to the interest and penalty additions hereinafter provided. Payments of taxes may be made at any time before their due date, but no discount shall be allowed for such early payment.

Section 33. MODE OF PAYMENT. All taxes payable under this Act shall be paid in lawful money of the United States or its equivalent, at the office of the collector in the judicial division in which same are due.

Section 34. LIEN.

(a) The taxes assessed upon property, together with interest and penalty, shall be a lien thereon from and after assessment until paid, and no sale or transfer of such property shall in any way affect the lien of such taxes.

(b) Liens for taxes hereunder shall be first liens and paramount to all prior and subsequent encumbrances, alienations and descents of the property.

Section 35. INTEREST.

(a) For failure to pay taxes when due, interest inclusive of penalty at the rate of one per cent per month shall be added on the first of each month until

the tax is paid or the property sold hereunder, but not to exceed the legal rate of interest in the aggregate.

(b) Where a tax becomes payable in respect to property assessed on a supplementary assessment roll, the like interest shall be added to and recovered as a part of the tax as might have been imposed if the return and the assessment had been made at the time prescribed by this Act and the tax had been duly levied and had not been paid.

Section 36. FAILURE OR REFUSAL TO COMPLY WITH ACT. Every person who, without reasonable excuse, in violation of any provision of this Act or of the regulations made thereunder—

(a) refuses or fails to make any return required to be made; or,

(b) in the making of any return, or otherwise, wilfully withholds any information necessary for ascertaining the true taxable amount of any property; or,

(c) refuses or fails to furnish to the assessor or his employee or agent any access, facility, or assistance required for the purpose of an entry on or examination of property or records; or,

(d) refuses or fails to attend or submit himself to examination on oath or otherwise by the assessor, the Board or the Tax Commissioner when duly cited so to do;—shall, in addition to penalties otherwise prescribed herein, be guilty of an offense against this Act.

Section 37. FALSE RETURNS AND RECORDS. Every person who knowingly and wilfully makes any false or deceptive statement in any return required to be made under this Act, or fraudulently omits to give therein a full and correct statement of the property of the taxpayer, or makes or keeps any false entry or record in any book of account or record required to be kept under this Act, shall be liable, on conviction, to a fine of not less than One Hundred Dollars and not more than One Thousand Dollars.

Section 38. DEFACING POSTED NOTICES. Every person who, without reasonable excuse, tears down, injures or defaces any advertisement, notice or document which, under the authority of this Act or the regulations made thereunder, is posted in a public place, shall be guilty of an offense against this Act.

Section 39. PENALTY FOR OFFENSES. Every person guilty of an offense against this Act for which no other penalty is specifically provided, shall be liable, on conviction, for a first offense to a fine not exceeding Five Hundred Dollars, and for a second or subsequent offense to a fine of not less than One Hundred Dollars and not more than One Thousand Dollars.

Section 40. LIABILITY OF CORPORATE OFFICERS, ETC. Every director, manager, secretary or other officer of a corporation or association, and every member of a partnership or syndicate, who knowingly and wilfully authorizes or permits any act, default, or refusal which would subject the organiza-

tion to criminal liability hereunder, shall be likewise personally guilty of such offense.

Section 41. PROSECUTIONS. Prosecutions hereunder for imposing of fines shall be at the instance of the Tax Commissioner and be brought in the name of the Territory.

Section 42. RECOVERY OF UNPAID LIENS. On or after the first day of April of any year, the Tax Commissioner may, with the assistance of the Attorney General, file in the office of the clerk of the district court in the division in which property subject to delinquent taxes is situated, a list of all parcels affected by unpaid liens. Thereafter the Tax Commissioner shall, unless the matter be otherwise resolved, proceed to foreclosure of said liens in substantially the manner prescribed in Sections 22-2-8 to 22-2-18, both inclusive, of Alaska Compiled Laws Annotated 1949, for the foreclosure of land registration liens, and all pertinent provisions of said sections are hereby adopted as applicable hereto.

Section 43. BOARDS OF ASSESSMENT AND EQUALIZATION.

(a) There is hereby created and established for each judicial division a Board of Assessment and Equalization.

(b) Each Board shall consist of three members appointed by the Governor subject to confirmation by the majority of the members of both Houses convened in Joint Session, provided, however, that persons appointed may perform the duties of their offices

until action by the ensuing Legislature is taken either confirming or rejecting such appointments.

(1) Board members shall be appointed solely on the grounds of fitness to perform the duties of the office.

(2) In the event of a vacancy on any Board, a successor shall be appointed to serve for the balance of the unexpired term.

(c) The term of each Board member shall be six years, except as hereinafter provided, but any person duly appointed and qualified shall hold office until his successor is appointed and qualified. No Board member shall be eligible to serve more than one six-year term.

(1) The terms of the members first appointed for each Board shall begin when they are appointed and qualified and shall continue for the following periods: one until March 31, 1951, one until March 31, 1953, and one until March 31, 1955.

(2) A Board member may be removed from office by the Governor after notice and opportunity for hearing, upon grounds of inefficiency, neglect of duty, malfeasance in office, but for no other cause whatever.

(d) The principal offices of the respective Boards shall be located in the following cities: for the First Judicial Division at Juneau, for the Second Judicial Division at Nome, for the Third Judicial Division at Anchorage, and for the Fourth Judicial Division at Fairbanks.

(e) The compensation of each Board member shall be $15.00 for each day actually spent in the performance of his duties, including all the time away from his place of residence in connection therewith, together with per diem and travel expense payable in accordance with vouchers issued by the Tax Commissioner.

(f) Each Board, within its judicial division, shall have the power and duty, subject to the approval of the Tax Commissioner as to all expenses of Board operations, to:——

(1) Exercise general supervision and direct the activities of assessment and equalization of property taxes;

(2) select an employee or employees or enter into contracts with qualified persons to perform the functions of appraiser and assessor; provided, that persons so appointed shall have the technical and other qualifications prescribed by the Tax Commissioner, and be engaged at rates of compensation prescribed by the Tax Commissioner;

(3) keep an accurate and complete record of all Board business, orders and processes, which records shall be open to public inspection at all reasonable times;

(4) hold hearings and conduct investigations required in the administration of the assessment provisions of this Act and hear and determine appeals involving assessment of property, at such points in their respective divisions as will serve the general

convenience of the public, provided that written minutes may be kept of the testimony of witnesses without making a word by word record thereof;

(5) require attendance of witnesses and production of all necessary evidence at any hearings and administer oaths in the course of investigations conducted or hearings held pursuant to the provisions of this Act;

(6) require such searches and appraisements by the assessor as the Board sees fit;

(7) require officers and employees of incorporated cities and districts to furnish such information concerning assessment and equalization of property taxes as is deemed necessary;

(8) perform all duties specifically imposed and exercise all powers conferred upon the Board.

Section 44. TAX COMMISSIONER. The Tax Commissioner shall be the collector of taxes levied under this Act and enforce collections with the aid of such divisional collectors or other deputy collectors and personnel as he may see fit to appoint. He shall administer all provisions of this Act except those specifically assigned to a Board or under the purview of municipal or school district authority. The Tax Commissioner shall prescribe and furnish all necessary forms, and promulgate and publish all needful rules and regulations conformable herewith for the assessment and collection of any tax herein imposed, and shall voucher for expenditures according to law.

Section 45. SEVERABILITY CLAUSE. If any provisions of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

Section 46. EMERGENCY CLAUSE. An emergency is hereby declared to exist and this Act shall take effect immediately upon its passage and approval.

Approved February 21, 1949.

Appendix "A" "1"

CHAPTER 88, SESSION LAWS OF ALASKA, 1949.

Section 1. Section 3 of the Alaska Property Tax Act which was House Bill No. 2 of this session of the Legislature, is hereby amended by adding thereto at the end thereof the following language:

With respect to any boat or vessel engaged in marine service on a commercial basis and subject to the provisions of this Act, the owner of said boat or vessel may elect:

(a) To pay the tax levied hereunder on such boat or vessel on the basis of the value thereof as defined herein, or,

(b) To pay $4.00 per net ton of such vessel's registered tonnage, but in any event the amount payable hereunder, for each such boat or vessel, shall not be less than $20.00 per annum.

Approved March 23, 1949.

Appendix "B"

SECTION 16-1-121, ALASKA COMPILED LAWS ANNOTATED, 1949 (SECTION 73, CHAPTER 97, SESSION LAWS OF ALASKA, 1923).

"Whenever the tax on real property shall not have been paid when due, the councils of municipal corporations, in addition to the remedies now allowed by law, may enforce the lien of such tax by the sale of the property assessed, such sale to be made under the special proceeding hereinafter set forth, by order of the District Court of the division wherein the property assessed is situated."

Appendix "C"

SECTION 22-2-8, ALASKA COMPILED LAWS ANNOTATED, 1949 (SECTION 9, CHAPTER 49, SESSION LAWS OF ALASKA, 1945).

"§22-2-8. List of delinquent penalties: Filing and posting: Effect as notice and complaint. On the first day of August 1948, and on each August 1 thereafter, the Territorial Treasurer, by the Attorney General of Alaska, shall file in the office of the Clerk of the division of the District Court in which the property subject to such liens is situated, a list of all parcels of property affected by unpaid liens, which on such date have been unpaid for a period of at least four years or more after the date the penalties and other legal charges represented thereby became due and payable. Such parcels shall be numbered serially. The treasurer shall post a certified copy of such list in his office and in the office of the register of the District Land Office. Such list shall be known and designated as the 'List of Delinquent Penalties' and shall be captioned as an action in the appropriate division of the District Court. The action shall be entitled: 'In the matter of foreclosure of liens pursuant to Section 8 of the Alaska Real Property Registration Law by the Territory of Alaska. List of delinquent penalties for 19.....' Such list of delinquent penalties shall be verified by the affidavit of the Treasurer. The filing of such list of delinquent penalties in the office of the Clerk of the District Court of the division in which the property subject to such liens is situated shall constitute and have the same force and effect as the

filing and reporting in said office of an individual and separate notice of pendency of action and as the filing in such court of an individual and separate complaint against the real property therein described to enforce the payment of delinquent penalties which have become liens against such property."

Appendix "D"

SECTION 56-2-1, ALASKA COMPILED LAWS ANNOTATED, 1949.

"Actions by public corporations: Causes. An action may be maintained by any incorporated town, school district, or other public corporation of like character in the Territory in its corporate name, and upon a cause of action accruing to it in its corporate character, and not otherwise, in either of the following cases:

First. Upon a contract made with such public corporation;

Second. Upon a liability prescribed by law in favor of such public corporation;

Third. To recover a penalty or forfeiture given to such public corporation;

Fourth. To recover damages for an injury to the corporate rights or property of such public corporation."

[Section 1165; Compiled Laws of Alaska 1913.]

Appendix "E"

SECTION 16-1-35 (9)* (CHAPTER 66, SESSION LAWS OF ALASKA 1925, AS AMENDED).

"Ninth: [General tax for school and municipal purposes.] To assess, levy, and collect a general tax for school and municipal purposes not to exceed two per centum of the assessed valuation upon all real and personal property, and to enforce the collection of such lien by foreclosure, levy, distress and sale. Provided, however, that all property belonging to the municipality or the Territory, and the household furniture of the head of the family or a householder, not exceeding Two Hundred Dollars ($200.00) in value, as well as all property used exclusively for religious, educational, charitable purposes and the property of any organization, not organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, or the property of the auxiliary of any such organization and all monies on deposit, shall be exempt from taxation. Provided, further, that if any organization composed of veterans or its auxiliary derives any rentals or profits from any such property owned by it or them, such property shall not be exempt.

"Provided further, that the laws excepting certain property from levy and sale on execution shall not apply to taxes or to the collection of the same, or to any taxes levied by a municipal corporation."

*Subsequent amendments after the year 1949 are not included herein for the reason they were not considered by the District Court in deciding the *City of Yakutat v. Libby, McNeill & Libby, et al.*, 13 Alaska 378, 98 F. Supp. 1011.

Appendix "F"

31 STAT. 321, 521, SECTION 201.

"Sec. 201. The council shall have the following powers:

First. To provide suitable rules governing their own body, and to elect one of their members president, who shall be ex officio mayor.

Second. They may appoint, and at their pleasure remove, a clerk, treasurer, assessor, and such other officers as they deem necessary.

Third. To make rules for all municipal elections: *Provided,* No officer shall be elected for a longer term than one year.

Fourth. By ordinance to provide for necessary street improvements, fire protection, water supply, lights, wharfage, sewerage, maintenance of public schools, protection of public health, police protection, and the expense of assessment and collection of taxes.

Fifth. To impose and collect a poll tax on electors, tax on dogs, a general tax on real and personal property, possessory rights and improvements, and such license tax on business conducted within the corporate limits as the council may deem reasonable: *Provided,* No such tax shall exceed one per centum on the assessed valuation of property, and all assessments made by the corporation assessor shall be subject to review by the council, and appeals may be taken from their decisions to the district court: *Provided further,* No bonded indebtedness whatever shall be authorized for any purpose."

Appendix "G"

HOUSE BILL NO. 3.

January 27, 1943, pg. 45

"HOUSE BILL NO. 3 by Mr. Hurley, entitled:

> 'An Act to repeal Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and abrogating and repealing all accrued and unpaid taxes levied thereunder, and declaring an emergency.'

was introduced, read the first time and referred to the Committee on Judiciary and Federal Relations, to be later referred to the Ways and Means Committee."

January 29, 1953, pg. 103

"The Committee on Judiciary and Federal Relations reported HOUSE BILL NO. 3 back to the House with the recommendation that it do pass with the following amendments:

The title be changed to read:

> 'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency.'

Section 2 of HOUSE BILL NO. 3 be deleted.

The report was signed by Mr. Hurley, Chairman, and concurred in by Messrs. Eastaugh, Strainger and Pollock; Mr. Kay recommending that it do not pass.

HOUSE BILL NO. 3 was referred to the Committee on Ways and Means."

February 4, 1953, pg. 142

"The Committee on Ways and Means, to whom was referred HOUSE BILL NO. 3, reported the same back to the House with the recommendation that it do pass in accordance with amendments proposed by the Judiciary Committee. The report was signed by Mr. Johnson, Chairman, and concurred in by Messrs. Rutherford, Locken, Wilbur, McKinley, Boardman, Rentschler, Mrs. Bullock and Miss Prior.

HOUSE BILL NO. 3 was placed on the calendar for second reading."

February 5, 1953, pg. 152

"HOUSE BILL NO. 3 was read the second time.

At the request of Mr. Rutherford and by unanimous consent the following amendments to HOUSE BILL NO. 3, recommended by the Judiciary Committee, were adopted:

> Change the title to read: 'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency.'

Delete Section 2.

At the request of Mr. Hendrickson, Mr. H. L. Faulkner of Juneau was given the privilege of the floor to give information as to HOUSE BILL NO. 3.

It was moved by Mr. Greuel, seconded by Mr. Kay, that the following amendment to HOUSE BILL NO. 3, offered by Mr. Greuel, be adopted:

Delete emergency clause on lines 22, 23 and 25 and insert in its place: 'This Act shall become effective January 1, 1954.'

Change Title, deleting words 'and declaring an emergency.' and substitute 'and establishing an effective date.'

Motion lost.

HOUSE BILL NO. 3 was referred to Committee on Engrossment and Enrollment for engrossment."

February 7, 1953, pg. 175

"The Committee on Engrossment and Enrollment, to whom were referred * * * HOUSE BILL NO. 3, reported that it had found * * * HOUSE BILL NO. 3 correctly engrossed.

* * * HOUSE BILL NO. 3 was placed on calendar for third reading."

February 9, 1953, pg. 192

"It was moved by Mr. Boardman, seconded by Mr. Greuel, that HOUSE BILL NO. 3, on today's Calendar for third reading be re-committed to second reading for the following specific amendment offered by Mr. Boardman:

After word 'Repealed' on line 15, change the period to a semi-colon and add: 'provided, however, that all incentive exemptions granted by the Tax Commissioner under the provisions of subdivision (h), Section 6, Chapter 10, Session Laws of 1949, shall continue in full force and effect for the periods and under the terms con-

tained therein, and all such exemptions which have been so granted within a city, school district or public utility district shall remain in full force and effect and shall be binding upon the city, school district or public utility district where granted and apply to all municipal, school district and public utility district property taxes in the same manner as exemptions where intended to apply to Territorial property taxes levied by Chapter 10, Session Laws of 1949.'

Motion carried.

It was moved by Mr. Boardman, seconded by Mrs. Bullock, that the foregoing amendment be adopted.

It was moved by Mr. Eastaugh, seconded by Mr. Kay, that HOUSE BILL NO. 3 be continued in second reading. Motion carried."

February 10, 1953, pg. 203

"Second reading of HOUSE BILL NO. 3, continued.

The question before the House being, 'Shall the amendment to HOUSE BILL NO. 3, offered by Mr. Boardman, be adopted?' The roll was called with the following result:

Yeas, 11—Boardman, Bullock, Duffield, Eastaugh, Fagerstrom, Greuel, Hendrickson, Johnson, Kay, Olsen, Rentschler.

Nays, 13—Coghill, Dimock, Hurley, Locken, MacSpadden, McKinley, Pollock, Prior, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Motion lost.

It was moved by Mr. Wilbur, seconded by Mr. Kay, that the Attorney General be requested to appear before the House to give information as to HOUSE BILL NO. 3. The roll was called on the motion with the following result:

Yeas, 13—Boardman, Coghill, Duffield, Eastaugh, Fagerstrom, Greuel, Hendrickson, Johnson, Kay, Rentschler, Rutherford, Stringer, Wilbur.

Nays, 11—Bullock, Dimock, Hurley, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Snodgrass, Mr. Speaker.

Motion carried. Mr. Kay thereupon gave notice of his intention to move a reconsideration of his vote on the motion."

* * * * * * *

"It was moved by Miss Prior, seconded by Mr. Wilbur, that the rules be suspended and the vote on Mr. Kay's reconsideration be taken immediately. The roll was called on the motion with the following result:

Yeas, 17—Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, MacSpadden, McKinley, Olsen, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 7—Boardman, Duffield, Fagerstrom, Greuel, Kay, Locken, Pollock.

Motion carried.

The question being, 'Shall the Attorney General be requested to appear to give information as to HOUSE BILL NO. 3?' The roll was called with the following result:

Yeas, 14—Boardman, Bullock, Coghill, Eastaugh, Hendrickson, Johnson, Locken, McKinley, Olsen, Rentschler, Rutherford, Stringer, Wilbur, Mr. Speaker.

Nays, 10—Dimock, Duffield, Fagerstrom, Greuel, Hurley, Kay, MacSpadden, Pollock, Prior, Snodgrass.

Motion carried and the Sergeant at Arms was instructed to request the Attorney General to appear before the House.

* * * * * * *

Attorney General, J. Gerald Williams, appeared before the House to answer questions with reference to HOUSE BILL NO. 3."

February 11, 1953, pg. 218

"Second reading of HOUSE BILL NO. 3 continued.

It was moved by Mr. Hurley, seconded by Miss Prior, that the rules be suspended as to HOUSE BILL NO. 3, that it be considered engrossed, read the third time and placed upon final passage. Motion carried.

HOUSE BILL NO. 3 was read the third time.

Upon motion by Miss Prior, seconded by Mrs. Bullock, the previous question was ordered. The question being, 'Shall the Bill pass?', the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rent-

schler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the Bill passed.

The question then being 'Shall the emergency clause be adopted, the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the emergency clause was adopted.

There being no objection thereto, the title of the Bill was ordered to stand as the title of the Act.

HOUSE BILL NO. 3 had been reported correctly engrossed on February 7th and on February 9th had been re-committed to second reading for specific amendment. The specific amendment was not adopted, so the Speaker announced that he had signed HOUSE BILL NO. 3 and ordered the same sent to the Senate."

SENATE ACTION ON HOUSE BILL NO. 3

February 12, 1953, pg. 172

"HOUSE BILL NO. 3 by Mr. Hurley, entitled: 'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska,

1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency,'

was read the first time and referred to the Committee on Judiciary and Federal Relations."

February 19, 1953, pg. 244

The Committee on Judiciary and Federal Relations to whom was referred HOUSE BILL NO. 3 returned the same to the Senate with the report it had found HOUSE BILL NO. 3 in proper legal form and recommended the following amendments:

Insert new Section 2 as follows:

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in sub-section (a) of this section, which have been granted under the provisions of Section 6 (h) of Chapter 10, Session Laws of Alaska 1949.

The report was signed by Senator Stepovich, Chairman, and concurred in by Senators Jensen, Jones and Robison. HOUSE BILL NO. 3 was ordered placed on the Daily File for second reading."

February 20, 1953, pg. 261

"HOUSE BILL NO. 3 was read the second time.

Senator Egan asked unanimous consent to have HOUSE BILL NO. 3 re-submitted to the Committee on Taxation and Revenue.

Objection was voiced.

Senator Egan so moved; seconded by Senator Nolan.

The question being, 'Shall Senator Egan's motion to re-submit HOUSE BILL NO. 3 to the Committee on Taxation and Revenue pass?', the roll was called with the following result:

Yeas, 10—Barnes, Beltz, Butrovich, Coble, Egan, Engstrom, Ipalook, Lhamon, Lyng, Nolan.

Nays, 6—Gorsuch, Jensen, Robison, Snider, Stepovich, Mr. President.

And so the Motion carried, and HOUSE BILL NO. 3 was re-submitted to the Committee on Taxation and Revenue."

February 25, 1953, pg. 309

"The Committee on Taxation and Revenue reported HOUSE BILL NO. 3 back to the Senate without recommendation but that the amendments offered by the Judiciary Committee be adopted. The report was signed by Senator Engstrom, Chairman, and concurred in by Senators Lhamon and Ipalook; Senator Robison recommended that it do pass. HOUSE BILL NO. 3 was placed on the Daily File for second reading."

February 26, 1953, pg. 338

"HOUSE BILL NO. 3 was read the second time.

Senator Stepovich asked unanimous consent for the adoption of the amendment offered by the Committee on Judiciary and Federal Relations as follows:

Insert new Section 2 as follows:

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in sub-section (a) of this section, which have been granted under the provisions of Section 6 (h) of Chapter 10, Session Laws of Alaska, 1949. Renumber present Section 2 to Section 3.

There being no objection, the amendments were adopted.

At the request of Senator Egan and with unanimous consent of the Senate, HOUSE BILL NO. 3 will be held in second reading for further amendments."

February 28, 1953, pg. 363

"HOUSE BILL NO. 3 was again considered in second reading.

The following amendment was offered by Senator Stepovich:

Page 1, Line 9. After '1949' remove the comma, insert a semi-colon, and then add the following: 'excepting from repeal certain taxes and tax exemptions'.

Senator Stepovich asked unanimous consent for the adoption of the amendment. There being no objection, the amendment was adopted.

HOUSE BILL NO. 3 was referred to the Committee on Engrossment and Enrollment for engrossment."

March 3, 1953, pg. 383

"The Committee on Engrossment and Enrollment reported that it had found * * * HOUSE BILL NOS. * * * 3 * * * correctly engrossed. * * * HOUSE BILL NOS. * * * 3 * * * were placed on the General File."

March 5, 1953, pg. 435

"HOUSE BILL NO. 3 was read the third time.

At the request of Senator Snider and with unanimous consent of the Senate, Mr. H. L. Faulkner, Juneau attorney, was given the privilege of the floor to speak on HOUSE BILL NO. 3.

* * * * * * *

HOUSE BILL NO. 3 was continued and Mr. Faulkner concluded his talk on same.

Senator Egan asked unanimous consent of the Senate that the Attorney General of Alaska be heard on HOUSE BILL NO. 3. There being no objection, it

was so ordered and the Senate recessed until the Attorney General was summoned.

* * * * * * *

HOUSE BILL NO. 3 (continued)

Attorney General J. Gerald Williams was given the privilege of the floor to speak on HOUSE BILL NO. 3.

* * * * * * *

HOUSE BILL NO. 3 (Continued).

Mr. A. J. ('Tiny') Chichoski, member of the United Fishermen of Alaska, from Kodiak, was heard on HOUSE BILL NO. 3.

Senator Barnes assumed the Chair to permit the President to be heard on HOUSE BILL NO. 3.

The President resumed the Chair.

The question being, 'Shall HOUSE BILL NO. 3 pass the Senate?', the roll was called with the following result:

Yeas, 10—Barnes, Coble, Gorsuch, Jensen, Lhamon, Lyng, Robison, Snider, Stepovich, Mr. President.

Nays, 6—Beltz, Butrovich, Egan, Engstrom, Ipalook, Nolan.

And so the Bill passed.

The Secretary called the roll on the emergency clause with the following result:

Yeas, 12—Barnes, Butrovich, Coble, Engstrom, Gorsuch, Jensen, Lhamon, Lyng, Robison, Snider, Stepovich, Mr. President.

Nays, 4—Beltz, Egan, Ipalook, Nolan.

And so the emergency clause was adopted.

There being no objection thereto, the title of the Bill was ordered to stand as the title of the Act."

HOUSE ACTION ON HOUSE BILL NO. 3.

March 6, 1953, pg. 516

"A message from the Senate was read, transmitting HOUSE BILL NO. 3, which had passed the Senate with the following amendments:

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in subsection (a) of this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949.

Renumber present Section 2 to Section 3

Page 1, line 9, after '1949' remove the comma, insert semicolon, and add the following:

'excepting from repeal certain taxes and tax exemptions'.

It was moved by Mr. Rutherford, seconded by Mr. Eastaugh, that that House concur in Senate amendments to HOUSE BILL NO. 3. The roll was called on the motion with the following result:

Yeas, 22—Boardman, Bullock, Coghill, Dimock, Duffield, Eastaugh, Fagerstrom, Greuel, Hendrickson, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 1—Kay.

Absent, 1—Hurley.

And so the House concurred and HOUSE BILL NO. 3 was ordered enrolled."

March 7, 1953, pg. 525

"The Committee on Engrossment and Enrollment reported that it had found * * * HOUSE BILLS NOS. 3 * * * correctly enrolled. * * *

The Speaker announced that he had signed * * * HOUSE BILLS NOS. 3 * * * and ordered the same sent to the Senate for the signatures of the President and Secretary.

* * * * * * *

A message from the Senate was read transmitting the enrolled copies of * * * HOUSE BILLS NOS. 3 * * * signed by the President and Secretary. Said Bills were ordered sent to the Governor."

March 11, 1953, pg. 580

"The following message from the Governor was read:

'TERRITORY OF ALASKA
Office of the Governor
JUNEAU
March 11, 1953

Speaker of the House
Twenty-First Territorial Legislature
Juneau, Alaska

Dear Mr. Speaker:

In my message to the Legislature I touched generally on a few of the points which seemed to warrant retention of the property tax. Nor do I desire to repeat those in detail beyond mention that our well rounded tax structure, which has received expressions of approval from members of the Congress, will, if this tax is repealed, be no longer so well diversified, so well balanced, and so widely distributed if one of the three basic elements is removed. In addition, it may be noted that there is no place in the union where a real property tax is not levied, either by the state or its lesser subdivisions, or both, and few places where it is so low as 1%. Our sister Territory, Hawaii, has an elaborate tax structure which features a tax on real property. In my Message I likewise referred to the fact that Congress looks to Alaska to participate increasingly in its own financing as a token of good faith, warranting continued federal expenditures in the Territory. Some of these expenditures, which we in Alaska consider essential, are now in jeopardy: we

should do nothing further to jeopardize them. It is also apparent that despite our substantial surplus that the growing needs of the Territory are being recognized by this Legislature and that we are embarking on a perilous course if at the very outset of our era of growing population and expansion we rescind one important and substantial source of revenue. I would also like to stress the value of the property tax, beyond its revenue, in furnishing the Territory with the important machinery for determining and keeping current a record of property ownerships.

However, there is one entirely new point which I have not hitherto touched, which I feel the Legislature should consider. That is the matter of discrimination which would automatically follow repeal of the property tax.

In the fifteen year period, between 1934 and 1949—that is to say, before the enactment of the Territorial Property Tax—people living in municipalities and school districts were obliged to pay, by way of municipal and school district taxes, one-third of the cost of operating and maintaining their schools while the Territory contributed the remaining two-thirds. During this same period persons residing outside of cities or school districts paid no property taxes and thus contributed nothing directly for the support of their schools. The entire cost of construction, repair, operation and maintenance, was borne by the Territory. This means that the people living in municipalities and school districts were paying not only for their own schools but through general taxation for the rural schools as well. A typical example of this discrimination, should the prop-

erty tax be repealed, is called to my attention by Admiral (Squeaky) Anderson, who pointed out that the cannery which he operates within the city limits of Seldovia has been paying property taxes, while two other canneries just outside the local limits will, if the tax is repealed, make no such contribution. We may well ask whether such a practice is equitable and fair.

I have on hand also an unsolicited letter from a man with whom I am not personally acquainted, from Petersburg, who writes me as follows:

> "As a taxpayer of both real estate and of a documented vessel, taxable under the Alaska General Property Tax Act, I implore you to veto the bill recently passed by the Alaska Legislature repealing the General Property Tax. Speaking from personal experience I can truthfully say that this repeal act is not in accordance with wishes of the people in my community."

So the fact is that the repeal of the property tax will not remove any discrimination but will recreate one against all Alaskans living in urban and suburban communities. The real effect of the enactment of that law four years ago was to remove discrimination and to distribute more equitably the cost of government over all inhabitants in the Territory.

Those urban and suburban taxpayers constitute a substantial majority of the people of Alaska. By repeal of the property tax they will be discriminated against in favor of the far smaller number living outside of incorporated cities and school districts. It is difficult for me to justify so manifest an injustice.

It is therefore with regret that I am obliged to veto H. B. 3, an Act to Repeal the General Property Tax.

Sincerely yours,
s/ ERNEST GRUENING,
Governor of Alaska.'

Mr. Wilbur asked for a call of the House, and the Veto Message was made a first order of business at 11:00 A.M. today.

SPECIAL ORDER OF BUSINESS

The question now being, 'Shall HOUSE BILL NO. 3 pass the House notwithstanding the veto of the Governor?', the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the Bill passed.

The question then being, 'Shall the emergency clause be adopted?', the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the emergency clause was adopted.

The House having passed HOUSE BILL NO. 3 notwithstanding the veto of the Governor, the Chief Clerk was instructed to so advise the Senate."

SENATE ACTION ON GOVERNOR'S VETO ON H. B. NO. 3

March 12, 1953, pg. 561

"SENATOR Engstrom asked unanimous consent that the Rules be suspended and that HOUSE BILL NO. 3 and the Governor's Veto Message be considered at this time. There being no objection, it was so ordered.

* * * * * * *

Senator Engstrom moved that the Senate pass HOUSE BILL NO. 3, the Governor's veto notwithstanding, seconded by Senator Barnes.

The question being, 'Shall HOUSE BILL NO. 3, the Governor's veto notwithstanding, pass the Senate?', the roll was called with the following result:

Yeas, 11—Barnes, Coble, Engstrom, Gorsuch, Jensen, Lhamon, Lyng, Robison, Snider, Stepovich, Mr. President.

Nays, 4—Beltz, Butrovich, Egan, Nolan.

Not Voting, 1—Ipalook.

And so the Motion carried and the Bill passed, the Governor's veto notwithstanding.

The President ordered HOUSE BILL NO. 3 returned to the House."

Appendix "H"

SECTION 19-1-1 ALASKA COMPILED LAWS ANNOTATED, 1949, AS AMENDED BY CHAPTER 4 SLA—EX. SESSION, 1955

"Section 1. Section 19-1-1 ACLA 1949 is hereby amended to read as follows:

Sec. 19-1-1. Effect of repeals or amendments. The repeal or amendment of any statute shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. When any act repealing a former act, section or provision shall be itself repealed, such repeal shall not be construed to revive such former act, section, or provision, unless it shall be expressly so provided."